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Vol. II

TRANSCRIPT OF RECORD

(Pages 819 to 1698)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 55

UNITED STATES, APPELLANT,

vs.

E. I. DU PONT DE NEMOURS AND COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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Redirect examination.

By Mr. Metzger:

Q. Mr. Shanks, Mr. Bushby asked you some questions relating to portfolio and the diversification your company follows in its portfolio assets.

A. Yes.

Q. Could you tell us, sir, what amount of rigidity there is in this percentage applied to each aspect of your diversified portfolio?

A. Well, on our diversified portfolio I think we follow a rather orthodox pattern. We diversify according to industry and we diversify according to companies within the industry and we adhere to diversification, but there is considerable flexibility in it.

I mean by that we can go over and under, depending upon our analysis of various companies.

[fol. 715] Q. Sir, in your analysis of a company as to its potential earnings and profits and what you anticipate they will be or remain over a limited period of years, would you be inclined at that point, at any point where you found an attractive investment in that stock, to exceed the general limitations placed upon yourself for the purchase of that stock?

A. Well, there is no question but what if we think that the prospects of the company are sufficiently attractive and the price sufficiently attractive we would go over, but we would not go over to a great extent.

I mean, if we normally would hold about ten thousand shares we might go to 12 to 15 thousand, but I doubt if we would exceed it much more than that.

Q. It might go 50 per cent?

A. Possibly; but, even at that, you still would have a small percentage, in the one company.

Q. What do you mean, sir, when you say "sufficiently attractive"?

A. It means—well, I heard Dr. Murray discuss that. It is a question of how we assess the management, how we assess the prospects, their ability to operate and to succeed in the industry, and also their financial setup; and also what we know about the technology of the industry; and if all of

those are good and we think they are exceptionally good, and the price of the stock is low priced, we would be inclined to buy more than we might normally. It would be just a pro rated diversification.

Q. Mr. Bushby discussed with you further the proposition of where you would get the money that would be applied to the variable annuity concept, as developed by these companies. Have you made any studies of the possible outlets, the possible markets, that you might have for the variable [fol. 716] annuity?

A. We have not made a detailed study of all the various sources of savings and how we would tap them, but we have studied, of course, the possibilities of what we could do in connection with the group annuities, the variable annuities, and also in connection with the individual policies; but that doesn't go to a scientific research of what you would tap out of each source of savings, or how you would do it.

Q. Sir, Mr. Bushby brought out that this money would come from just about every source of individual saving at the present time?

A. That is right, I think it would.

Q. Do you have any idea, sir, to what extent each source might be tapped? In other words, do you anticipate that any one or two or three particular sources will be the largest source of variable annuity capital?

A. No, I don't think I could say that, because we are often surprised at what happens in connection with things like that.

I would say that people who are inclined to look after their old age, in connection with investments of one sort or another, would be the group that we would get at, and they would probably be people that are inclined to purchase stock in the stock market just on their own, or to buy mutual funds—someone that had an inclination to go into stocks, anyway.

Q. Sir, Mr. Bushby's next series of questions related to a corporation making debt financing year after year?

A. That is right.

Q. And you replied, I believe, that, generally speaking, at some point you might have to go into equities?

A. Yes, that is right.

Q. Let us relate our questions specifically to the General Motors organization.

[fol. 717] As a man who has spent a good part of your adult life in the field of debt financing, to what extent do you feel that you would consider it a reasonable financial practice to extend debt financing to the General Motors Corporation?

A. Well, as to that, in spite of the fact of having been involved in financial matters a good deal of my life, I really don't know what the debt structure or stock structure is of General Motors. I would have to have some instruction on that before I could make any comment.

Q. You have no information?

A. I don't know what the debt structure of General Motors is, frankly.

Q. All right, sir.

Now the last series of questions that Mr. Bushby addressed to you, sir, related to the proposition of what would happen to General Motors equity financing.

A. Yes.

Q. In the event of the operation of the Government plan.

A. Yes, that is right.

Q. And you stated, that, I believe, without some provision for suspension of the operation of the plan during the period of General Motors equity financing, that this would cause some difficulty?

A. Yes, that is right.

Q. Now, assume, sir, that a provision were made for a suspension, the period of the suspension to be determined by a professional adviser, and then General Motors were to be given an opportunity to make its equity financing——

Mr. Tierney: If the Court please, I object to this.

The question has some assumptions that have no relation to the proposed plan that has been filed in this court; he is examining a witness about something that the Government doesn't propose.

I object to it.

Mr. Metzger. Do you want argument, sir?

[fol. 718] The Court: Yes, I would like to hear from you.

Mr. Metzger: The Government, sir, has proposed a plan to this court. It is not our contention that it is our function to give any particular plan of divestiture.

We have made an offer. If for some reason, in some respect, a given plan is objectionable, we are willing to change

it. Our sole position before this court is that this interest, this co-interest between these two companies must be severed, severed finally and severed completely; and if the plan that we have offered today must be amended for the satisfaction of these parties or other interested parties, and the end result is a complete severance of the relations between these two companies, the Government would find any such plan satisfactory.

Mr. Cox: May it please the Court, I don't wish to interrupt this examination, but this problem, in my judgment, that has been raised by this colloquy is getting acute.

Your Honor may recall that when we had the first pretrial conference and the schedule was set under which parties were to come forward with plans, that I suggested at that time, as I think the transcript will show, that this procedure would be effective only if the parties really came forward with specific plans.

And the Government did come forward with a specific plan, or what we thought was a specific plan.

Now it appears in the course of this hearing that that may not be the Government plan at all.

Mr. Metzger: Mr. Cox, before you finish——

Mr. Cox: Let me finish, please.

[fol. 719] Mr. Metzger: This is the Government plan.

Mr. Cox: Let me finish, please.

We are faced with the problem of litigating the issues here, when we don't know what the issues are.

The Court: Well, the Court sustains the objection to the question.

Mr. Metzger: May it please the Court, is it the ruling of the Court that the Government may not demonstrate that a modification of the Government plan will overcome an objection which has been raised by the defendants?

The Court: That question is not before the Court. There is an objection to the question as stated. The Court sustains that objection.

Mr. Metzger: Let me rephrase the question.

By Mr. Metzger:

Q. Mr. Shanks, in the event that a large corporation, industrial corporation, were required to engage in some equity financing during a period of an outside distribution of large amounts of their stock, and if such plan provided for a sus-

pension of those activities during whatever period necessary to accomplish the equity financing of the company under professional management, would that equity financing be seriously hampered by outside sales?

Mr. Tierney: If the Court please, same objection. It is further removed now from this case than it was when it was stated the last time.

Mr. Metzger: If the Court please, the Government is before this Court attempting to reach a just and equitable decree, consistent with the requirements of complete divesti- [fol. 720] ture, which we feel exists under the law.

The Court: It appears to me that since Mr. Bushby questioned this witness with reference to financing, that the question is proper on redirect.

By Mr. Metzger:

Q. Would you answer, please, sir?

A. Without any doubt, that would make it easier for that corporation to do its financing, but there still would be the problem of the succeeding years of overhang which would cast a sort of pall over the thing, I would think.

Q. To what extent, sir?

A. It all depends on how much overhang was left, and whatnot. In other words, it is not as good an atmosphere as you would otherwise have if there were not this outside liquidation going on, and yet to go on after the pause.

Q. Now, sir, some questions were addressed to you by Mr. Cox with relation to the tax impact of this decree upon the Prudential Company. Would you, without going into detail,—I understand that it is a very complicated subject—generally outline for us the taxable aspects of the insurance business, as far as income tax is concerned?

Mr. Bushby: I object.

The Court: Sustained.

By Mr. Metzger:

Q. Sir, what income tax must you presently pay upon your interest accounts of the holdings of the Prudential Insurance Company?

A. Well, under the law which is now the law, but which is being superseded by the permanent law, which we are all working toward getting—and it is going before the Senate

Finance Committee next Tuesday for hearings—we would [fol. 721] pay, after setting aside an amount as computed necessary for our reserves, out of our investment earnings, we would pay a 52 per cent tax upon the surplus over and above the amount necessary for those reserves.

Q. This is under the new plan, sir,—the new tax?

A. That is under the present plan. It gets into complications as to how we figure the deduction for the reserve; but even under the present plan, it is, in effect, an excise tax upon our investment earnings.

Q. This tax scheme you have just outlined is the one that will come into effect under the permanent plan?

A. Yes, that is right.

Q. About what amount of your income, sir, is set aside with the reserves?

A. Our investment income is—the amount that we have to take out of that for our reserves would probably run as high as 80 per cent of the investment income, maybe a little more, or a little less.

Q. So that you would be taxed on 20 per cent of the investment income?

A. If you use that for purposes of illustration.

Q. Did I understand you to testify that you received the benefit of the intercorporate dividend tax?

A. That is provided for, as I understand it, in the new law.

Q. Then, as I understand it, you would be taxed upon a distribution of General Motors shares and du Pont stock at a corporate basis—you do get the corporate rates, do you not?

A. Yes.

Q. (Continuing)—at a corporate basis on 20 per cent of your income?

A. Well, that is something—that is right.

[fol. 722] Q. With some part of an intercorporate dividend tax credit applied to that?

A. That is right. You get the intercorporate dividend credit; but about 80 per cent of it goes against the reserve, so it is used up there.

Q. Upon that you are presently taxed at 52 per cent?

A. That is right.

Q. You will be taxed at the 52 per cent rate?

A. That is right.

Q. Now, sir, I would like to put a hypothetical question to you.

Let us assume that you received General Motors shares as a dividend on your du Pont stock and that the tax the Prudential Insurance Company would pay on such a distribution would be an amount less than an increased amount of dividends you would receive over a two-year or shorter period of time?

A. In other words, you would more than make up your tax with two years' dividends.

Q. Yes. Would you prefer the one piece of paper, du Pont share, or would you prefer the two pieces of paper, du Pont and General Motors shares?

Mr. Dallstream: If the Court please, I object to that question.

We have here shareholders who are in different tax situations. It is perfectly understandable by everyone in this case that the maximum tax that the Prudential Insurance Company will have to pay is about 16 cents a share to take down the stock of General Motors, against which you might have a tax as high as maybe $60 or $70 per du Pont share in the case of an individual; and to ask this question of this [fol. 723] witness without clearly showing in the record the effect upon other shareholders would be highly improper.

The Court: The question is limited to a corporate holder, as I understand, namely, the insurance company?

Mr. Metzger: That is right.

The Court: He may answer.

By Mr. Metzger:

Q. Would you answer the question?

A. Mr. Metzger, in the first place, we would have to have a very careful expert opinion to the satisfaction of our own minds as to just exactly what we were going to have to pay in taxes, and what not.

Q. Within——

A. Within anything. But once that is settled, and if what you say is correct—these tax things have a very funny way of not always coming out the way they are set—but, assuming what you say is correct, and if it were a good deal for us, sure, we would like to have it.

If it weren't a good deal, we wouldn't. It all depends on the way it came out.

Mr. Metzger: Thank you.
I have no further questions.

(Witness excused.)

The Court: The Court stands recessed for ten minutes.

(A short recess was taken.)

The Court: Proceed.
Mr. Reycraft: The Government calls Edward McCormick.

[fol. 724] EDWARD MCCORMICK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reycraft:

Q. Will you state your full name, please?
A. Edward T. McCormick.
Q. Where were you born?
A. Phoenix, Arizona.
Q. Will you describe your educational background?
A. I attended the Universities of Arizona, California, Northwestern, and Duke.
Q. Do you have a Bachelor of Science degree?
A. From Arizona; Masters Degree from California; Ph.D. from Duke.
Q. Are you a certified public accountant?
A. Yes, in the State of Illinois.
Q. Will you describe your professional career briefly, Mr. McCormick.
A. I was on the staff of the Securities and Exchange Commission for fifteen years. I was appointed a Commissioner by President Truman in 1949, and became President of the American Stock Exchange in 1951.
Q. Have you written any books relating to securities, Mr. McCormick?
A. I am the author of the book, "Understanding the Securities Act and the SEC."

Q. What is your present job, Mr. McCormick?

A. I am President of the American Stock Exchange.

Q. Mr. McCormick, in your background, are you familiar with the influences on the market of institutional investors?

A. Yes, I am.

Q. And will you state, briefly, what your understanding of the term institutional investor is?

A. That would be in distinction from individual investors. [fol. 725] It would include insurance companies, pension funds, mutual funds, both open and closed end funds.

Q. Will you explain the difference between an open and closed end mutual fund?

A. An open end fund sells securities regularly, almost constantly. They do not have single offerings. As the demand for the certificates arise, they sell them. Whereas, in the case of a closed end company, it is more in the nature of the usual corporate setup, where you have a set capitulation and the shares that are outstanding are traded.

Q. Are you familiar with the pattern of growth of purchases of institutional investors of common stock over the last several years?

A. Well, I think anyone would concede that it is one of the most remarkable developments in our market today.

Q. Could you expand briefly on that statement with some particulars?

A. Well, to illustrate the growth, in 1940 the mutual open end funds had assets of approximately a half billion dollars, whereas as of the latest report, they have assets totalling 13¼ billion dollars.

It is also indicated that at the present time other institutional investors have investments in stocks exceeding 12 billion.

Q. Do you have any opinion with respect to the growth of these funds in the future?

A. Well, indications are that the flow of funds, if it continues at the rate now appearing, should be a very substantial factor in the market.

Q. Are you familiar with the work of Mr. Vito Natrella?

A. Yes. He was an associate of mine at the Securities and Exchange Commission.

[fol. 726] Q. Would you be willing to express an opinion as to his qualifications in this field?

A. I always considered him an outstanding statistician, and, therefore I maintained him on our employment rolls.

Q. Are you familiar with his work, his projections of institutional purchases?

A. I am not familiar with the details, no.

Q. Mr. McCormick, in your opinion, could a trustee given sufficient discretion successfully market 63 million shares of General Motors stock over a ten-year period?

A. It would——

Mr. Bushby: Well, I think there should be more than that bare statement, your Honor.

There should be some statement of the conditions. I assume he is getting down to the proposed Government decree; what is provided for therein. I think there should be some similarity.

This is a wide open question.

The Court: Read the question, please. (Question read.)

The Court: Overruled.

By the Witness:

A. No one can say definitely, without knowing the conditions of the markets for the next ten years, whether or not it would be feasible. However, assuming markets of the type we have had recently, and giving the trustee adequate flexibility in handling any distribution or sale, it is possible.

Mr. Reycraft: I have no further questions.

Mr. Bushby: I would like to point out, Your Honor, what Mr. Cox and Mr. Tierney pointed out earlier, that this ap-
[fol. 727] parently represents an entirely different slant on the Government plan.

This looks like a plan for du Pont to sell 63 million shares, and not a distribution.

It doesn't seem to relate to the present plan.

The Court: Do you wish to cross examine the witness?

Mr. Cox: I have one question, and then I will allow other counsel to question.

Cross-examination.

By Mr. Cox:

Q. I assume, Mr. McCormick, that you wouldn't care to try to predict this afternoon at what price or prices the stock might be sold over that period?

A. Definitely not.

Mr. Cox: That is all.

Mr. Bushby: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Reycraft: The Government calls George Weiss.

GEORGE WEISS, a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reycraft:

Q. Mr. Weiss, what is your name?

A. George Weiss.

Q. What is your present employment?

A. I am a partner in the firm of Bache and Company.

Q. What are your duties with Bache and Company, Mr. Weiss?

A. I am partner in charge of research and sales.

Q. Are you also manager of research?

A. Yes.

[fol. 728] Q. Were you at one time a Fellow of the Brookings Institute?

A. Yes.

Q. Have you taught, Mr. Weiss?

A. Yes. I gave courses in economics and finance at Columbia, New York University, and the American Institute of Banking.

Q. What subjects did you teach?

A. As I said, economics and corporation finance; also a course called "the work of investment institutions," which was in effect work in the practices in Wall Street.

Q. Does your firm engage in underwriting?

A. Yes.

Q. Does it also engage in retail distribution of securities?

A. Yes.

Q. Would you be able to describe your firm's position in the field of secondaries?

A. Well, I don't like to boast. I should say we are one of the more important companies in the field of secondary distributions.

Q. Would you say you are either first or second?

A. I wouldn't want to make a categorical statement. I would say we are one of the leading firms in secondary distributions.

Q. Normally, Mr. Weiss, when your firm is asked to handle a secondary, what are the conditions imposed with respect to the timing of the sale?

A. Well, they would vary widely from issue to issue. Sometimes it might be a matter of hours. Of course, as you know, if a stock is listed on the American Stock Exchange or the New York Stock Exchange, permission to execute a secondary must be obtained from the authorities of the Exchange. That involves a certain amount of time. But as I say, sometimes it is a matter of hours. Negotiations, of course, may go on for days.

Q. Does having a period of time, for example, such as [fol. 729] thirty days, assist you in accomplishing such a sale?

A. Well, for the moment I can't think of a case where you would have as long a period as that. Usually, secondaries are a matter of days rather than of weeks.

Q. So that if you had a matter of several days, that would be quite a long time on a secondary?

A. It would probably be a sufficient time in which to work out a secondary distribution.

Q. When your firm handles a secondary, will you describe the procedures by which you organize your group?

A. Practically the same procedure that is used in organizing any underwriting group. There are certain types of securities that are sold by certain underwriters. Many underwriters specialize in utilities, some in industrials, some in rails. You pick the group that you feel will be interested in the particular issue that you are considering.

Q. Are you able to assemble such a group in a short period of time?

A. It depends on market conditions.

Q. How do you do this?

A. By calling up the syndicate managers of different underwriting firms. Bear in mind that I am not the partner in charge of underwriting or syndicate operations.

Q. Yes, you have described your position.

A. Yes, so that those details are more familiar to my partners that are in that particular field of activity.

Q. Does your firm ever engage in the practice of matching blocks of stock, crossing blocks of stocks?

A. Well, I should say, when you say "crossing," we attempt to find buyers and sellers for blocks of stock when they come to our attention, yes.

Q. Will you describe what you mean by "crossing blocks [fol. 730] of stock"?

A. We attempt to find the buyer and the seller. Let us say that we know of a block of stock that is for sale. A client of ours has a block of stock that they wish to dispose of. If we find that we can get a buyer, we get permission from the Exchange to cross it on the Exchange. In other words, we get both the buyer and seller for the transaction.

Mr. Bushby: If Your Honor please, I think this is quite ambiguous, these questions and answers, unless some fact is stated as to whether these are registered secondaries.

The Witness: In some cases they wouldn't be registered. You couldn't register a secondary and have a secondary issue that would only take a matter of hours to get rid of.

By Mr. Reycraft:

Q. Is it your testimony, then, that with a block transaction, crossing blocks of stock——

A. That does not require registration.

Q. What additional complications does registering an issue entail?

A. Primarily the complication of time.

Q. How long a period of time does that involve?

A. That also is a matter that varies, depending on how long it takes to get through the SEC.

Q. Would these sales be made at the market price?

A. What sales are you referring to, if I might ask?

Q. We are talking about crossing blocks of stock.

A. Yes.

Q. How do you arrive at the price?

A. The market fixes the price for us.

Q. Is this the closing price you are referring to?

[fol. 731] A. If it is a secondary after the close, it would be based on the closing price.

Q. Does your firm engage in the retail distribution of stock in mutual funds?

A. Yes.

Q. Can you refer to specific funds which you have retailed in the past year?

A. We have a selected list of funds. It covers quite a number that we sell as dealers. We cover the chief funds of Fidelity, Wellington and One Williams Street, and so on. We could list a dozen or two.

Q. Was your firm an underwriter in the One Williams Street sales?

A. Yes.

Q. Would you explain briefly for the record what the One Williams Street fund is?

A. One Williams Street is at the present time an open end mutual fund.

I happened to hear the testimony that Mr. McCormick gave, and he gave you a definition of an open end fund. One Williams Street qualifies under that definition.

Q. Do you know what the total amount of stock sold in that fund was during the past year?

A. Not during the past year, but I believe when it was issued, $192,000,000 was raised.

Q. Are you familiar with the Wellington Fund?

A. Well, there are two Wellington Funds. There is a Wellington Balance Fund and a Wellington Stock Fund that was issued last year. We were one of the chief underwriters in the latter.

Q. Do you recall how much stock of that fund was sold last year in the new underwriting?

A. I am not quite sure, no.

I don't remember. We did about 350,000 shares retail. We underwrote about 450,000. I don't remember the total figure.

Q. Will you explain with respect to secondary distribu-
[fol. 732] tions how the commission rate is determined?

A. Well, it is a matter of bargaining to a large extent between the seller and the broker.

Q. Is it determined with reference to any particular basic rate?

A. Well, I should say one of the chief considerations is what incentive will be necessary to make a successful sale.

Q. With a difficult secondary, what would the commission be?

A. It might run three, say three and a half, in some cases, even four times the regular commission. Three to three and a half, I would say, would be a typical—three to three and a half times the regular stock exchange commission.

Q. And as far as the purchaser is concerned, what price does——

Mr. Cox: If it please the Court, pardon me for interrupting, is the witness testifying about the practice of Bache and Company now or generally?

Mr. Reycraft: I believe he is qualified as an expert in this field.

Mr. Cox: I am not quarreling over that. I just want to know if he is talking about Bache and Company or the Street.

The Witness: I am talking about my idea of a typical transaction, of a typical rate.

Mr. Cox: Throughout Wall Street?

The Witness: Yes. As I said, it would vary with the different issues, depending upon the type of issue involved.

By Mr. Reycraft:

Q. Mr. Weiss, will you explain with respect to the second-
[fol. 733] ary what terms are to the seller? I am not talking about specific price, but does he get net after commission?

A. Yes.

Q. In other words, the commission is paid by the seller?

A. Yes.

Q. Do you have notes which refer to specific secondaries which your firm has handled recently?

A. Yes, I do.

Recently, it is within the past year.

Q. Yes.

A. There are a number. I don't have all of them. I jotted down a few. Do you want me to read them?

Q. Yes, if you will.

A. There was an issue of 50,000 United Aircraft; 100,000 shares of Yale and Towne——

Mr. Bushby: Could we have some more detail? Is that the offering price?

The Witness: No, I don't have those figures, I am sorry to say.

Mr. Bushby: That is just the number of shares?

The Witness: The number of shares is all I put down.

By Mr. Reycraft:

Q. Will you continue?

A. The second one is 100,000 shares of Yale and Towne. I will start over.

50,000 shares of United Aircraft. I think the second one I said was 100,000 shares of Yale and Towne; 22,000 shares of Hercules Powder; 52,000 shares of Lone Star Cement.

The last was 52,000 shares of Lone Star Cement; 123,000 shares of Illinois Central.

Mr. Cox: 12,300?

The Witness: That is right.

[fols. 734-735] By the Witness:

A. (Continuing) 58,000 shares of Phillips Petroleum; 51,000 shares of Pfizer; and 129,000 shares of Merck.

Mr. Cox: I didn't get the shares on the Pfizer offering.

The Witness: Pfizer was 51,000 shares; and 129,000 shares of Merck.

By Mr. Reycraft:

Q. In your opinion, Mr. Weiss, what are the major influences on the price of common stock?

A. Well, over a period of time, of course their earnings and dividends.

Q. Are you familiar with the funds which are maintained by labor unions as a source of investment?

A. To some extent.

Q. And are you familiar with the nature of the investments which they currently carry?

A. As far as I have been able to determine, for the most part they are investing in U. S. Government bonds.

Q. Have you discerned any tendency of these funds to change their type of investment?

A. There has apparently been some tendency toward the purchase of common stocks in the last year.

Mr. Reycraft: I have no further questions.

Mr. Cox: I think we will let you go, sir.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Reycraft: We have nothing further today, Your Honor.

(Whereupon an adjournment was taken in the above-entitled case until 10:00 o'clock a.m. of the following day, Thursday, February 26, 1959.)

[fol. 736]

Transcript of Proceedings of February 26, 1959

The Clerk: Case on trial.

The Court: Proceed, gentlemen.

Mr. Owens: If Your Honor please, the Government calls as its first witness George Russell.

George Russell, a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Owens:

Q. Will you state your full name and address, sir?

A. My name is George Russell. I live in Bloomfield Hills, Michigan.

Q. And would you tell us what your present position is, sir?

A. I am with General Motors Corporation, executive vice president and member of the board of directors and several of its governing committees.

Q. Will you tell us what committees you are presently a member of?

A. I am a member of the Finance Committee, and of the Executive Committee, both committees of the board.

Q. How long have you been with General Motors, sir?

A. I started with General Motors after finishing school at the University of Minnesota in 1927. That was June. In August of that year, 1927, I joined General Motors.

Q. And would you outline for us the respective positions you have held since the commencement of your association with the General Motors Corporation?

A. Well, when I started, I started as a clerk, the way we all do, or most of us, and eventually became a supervisor in the Treasurer's office.

In 1944, it was January, I was made assistant treasurer of the corporation and I continued in that capacity until [fol. 737] 1949, at which time I was appointed finance manager of the General Motors overseas operations.

Those operations are the plants outside of the United States and Canada.

Q. Did you subsequently become Treasurer, sir?

A. In 1951 I was elected Treasurer of General Motors Corporation and continued in that capacity until 1956, April, when I was elected Vice President and a member of the then Operations Policy Committee and the then Financial Policy Committee.

Q. Now, Mr. Russell, are you familiar with the bonus stock plan of the General Motors Corporation?

A. Yes, I am.

Q. Will you tell us what the bonus stock plan is, sir?

A. The bonus plan was first adopted in 1918 and has been in effect, although modified numerous times, since 1918. The bonus plan is a plan to provide incentive and to permit —it has the result of making employees participants in the success of the business through stock ownership.

Q. That is through stock ownership in the General Motors Corporation?

A. That is right.

Q. And the bonus stock that is referred to is stock in the General Motors Corporation, is that correct?

A. That is right.

Q. And this plan, as I understand it, is to provide incentive and encouragement to employees in their work by affording them an opportunity to become part owners of the corporation through acquiring stock; is that accurate?

A. Yes.

Q. Now, you say that has been in effect since 1918 and it is in effect at the present time, is that right?

[fol. 738] A. Yes, sir, but there have been numerous amendments throughout the period.

Q. But it has been continuously in effect during this approximately forty-year period?

A. Yes.

Q. Do you know when the plan was last modified or changed, sir?

A. It was last modified by stockholder action in 1957 at the annual meeting held in May.

Q. And is there a requirement for a periodic submission of the plan to the stockholders?

A. Yes; there is a provision, a bylaw that requires that the plan be submitted to the stockholders every five years. That means that the plan continues by action of the stockholders for three more years.

In other words, in 1962, if the plan has not been suspended by action of the Board of Directors or by the Bonus and Salary Committee, it would then be up again for consideration.

Q. So it will continue, barring those events, until 1962, when it would be again submitted to the stockholders, is that right?

A. It would continue in effect, yes.

Q. Now, would you tell us where the fund is set up to pay for the bonuses under this plan?

A. The fund as provided by the plan represents a portion of the earnings above a definite return. The plan provides that earnings of 12 per cent in excess of 5 per cent on capital, both terms are defined in the plan——

Q. That is, net earnings and net capital are both defined in the plan?

A. That is right.

(Continuing)—may be credited. That is the maximum amount that may be credited.

Q. And that is a provision of the plan that an amount not to exceed 12 per cent of the net earnings after deducting [fol. 739] 5 per cent on net capital?

A. In the discretion of the Bonus and Salary Committee.

Q. But that is the maximum or outside limit?

A. That is the maximum credit that may be set up in a year.

Q. Now that is a dollar amount that the Bonus and Salary Committee has the discretion to fix, either at the maximum or some figure under that maximum, is that correct?

A. Or no figure at all, may I add?

Q. Or no figure at all?

A. That is correct.

Q. Now when is that customarily fixed, sir?

A. The total amount for a particular year can not be fixed until the auditors have rendered their statement, the independent public accountants.

Q. So that is after the operating results necessary to determine what the net earnings have been and net capital, as those terms are defined in the plan, is that correct?

A. That is correct.

Q. Now I take it from the fund thus set aside, there are awards made to employees of the corporation in accordance with the plan?

A. I think I would like to have you clarify what you mean by "funds set aside."

Q. Well, this reserve. From the amount of the maximum that the Bonus and Salary Committee fixes as the fund from which awards, bonus awards may be picked.

A. When the Bonus and Salary Committee receives what the amount of the 12 per cent of net earnings after 5 per cent of the capital is in dollars, it reviews the figure; it then decides how much of that should be credited to the reserve.

Q. And from the amount thus credited to the reserve, that amount is available for awards under the Bonus Program?

A. No, sir. The next step, the Committee decides how [fol. 740] much of that in the reserve should be awarded as bonuses for that year.

It doesn't necessarily have to be the same amount. In the last ten years, the maximum credit has only been established on six occasions; in other words, four times it was a lesser amount than the maximum credit:

Q. That was actually set aside as the total figure from which awards were to be made?

A. From which awards could be made.

Then I might add that of the amount that has been set up and available for awards that on two occasions in the last ten years the full amount that was set aside was not awarded. Those were considerable amounts in both cases.

Q. Now who has the discretion to make the awards; that is, who selects the employees that will receive the awards and the amount of the awards to be accorded to each such employee?

A. In the last analysis, all the awards are approved by the Bonus and Salary Committee.

The Bonus and Salary Committee has full jurisdiction on the awards which may be made to those directors who are also employees.

The balance of the awards are based on recommendations by the Chairman of the Board and the President of the Corporation.

Q. Would you tell us in what kinds of property the award that is set by the Bonus and Salary Committee can be made?

A. The awards may be made in cash or in stock, or partly in cash and partly in stock.

Q. Would you tell us, sir, what the experience has been in the past ten years with respect to the type of property —these two types of cash and stock—that is General Motors stock, is that right?

A. Yes.

[fol. 741] Q. (Continuing) Have they, generally, during the past ten years employed both in making an award, given both part cash and part stock to the employee who receives the award?

A. Generally speaking, it has been part stock and part cash. If you go back ten years, you will find that in accord-

ance with a right to determine what part should be stock and cash, I think in the period around 1947-1948, only about twenty per cent of the total awards were paid in stock.

At the present time the awards are about half stock and half cash.

And this is a matter that is considered each year by the Committee and a determination made at that time.

Mr. Owens: I will ask the reporter to mark for identification, as a Government exhibit, a document entitled, "Funds Expended for Purchase of Bonus Stock, 1947-1954."

That is a document that was attached as Exhibit I to a report to the Bonus and Salary Committee from the Secretary of that Committee. The subject of the report was, "Revision of Bonus Plan to Provide for Use of Newly Issued Stock." It bears the date of May 31, 1955.

(Thereupon said document was marked Government Exhibit 170 for identification.)

By Mr. Owens:

Q. I show you Government's Exhibit 170 for identification. Do you recognize this document, Mr. Russell?

A. Yes, I recognize the figures.

Q. You will note on the extreme right-hand side of that document, a column entitled, "Stock Portion as a Per Cent [fol. 742] of the Total Bonus," and it reads down from the year 1954 and gives a per cent for each year back to 1947.

Now, are these the figures to which you refer when you state that back in 1947 it was something around in the low 20 per cents and has increased to the year 1954 where it is 53.3 per cent?

A. My reference was the year 1957-1958, approximately 50 per cent.

I think that is the way I stated it.

Q. So that beyond the years 1954 to the present, it is your recollection that it is approximately, of the total amount awarded, 50 per cent in General Motors stock, and 50 per cent in cash?

A. Maybe 51 or 49.

Q. But approximately in those proportions?

A. That is right, sir.

Mr. Owens: I offer Government's Exhibit 170.

Mr. Tierney: No objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked Government Exhibit 170.)

By Mr. Owens:

Q. Now, Mr. Russell, do you know what the source of the General Motors stock that has been awarded under this Bonus Plan has been?

A. The source of the bonus stock has been principally the New York Stock Exchange.

Q. Does it represent stock that has been reacquired by the corporation, outstanding stock?

A. It represents stock that was purchased on the New York Stock Exchange.

Q. By the General Motors Corporation?

A. By the General Motors Corporation.

[fol. 743] Q. For cash, is that correct?

A. For cash.

Q. Is that purchased generally at the current stock market price at the time of the purchase?

A. It is purchased daily when we have requirements; and it is bought and registered as any other sale on the New York Stock Exchange.

Q. So that the expense of that stock to General Motors Corporation includes the commissions incident to the purchase?

A. Yes, sir.

Q. Now when that stock is acquired, is it placed in a special account of any kind, sir?

A. Yes, it is.

Q. What is that special account?

A. It is a special account for bonus purposes.

Q. So that it is segregated from the other corporate assets?

A. From the other corporate stock, yes.

Q. Would you tell us on what basis it is valued in being placed in the special Treasury stock account?

A. It goes in there at cost, including commissions.

Mr. Owens: I ask that the Reporter mark for identification Government Exhibit 171, which is entitled, "General Motors Bonus Plan," and it is further identified as a pamphlet; and on the first inside page it is described as "Originally approved by the Stockholders August 27, 1918; thereafter modified from time to time and last approved by the Stockholders May 24, 1957."

(Thereupon said document was marked Government Exhibit 171, for identification.)

Mr. Owens: I offer Government Exhibit 171.

Mr. Bushby: If Your Honor please, I see no possible relevance to any of this testimony, and I would like to have a standing objection to the whole thing, with the exhibits.

The Court: Objection overruled. You may have a standing objection.

(Said document, so offered and received into evidence, was marked Government's Exhibit No. 171.)

[fol. 744] Q. Now, Mr. Russell, in the event that the amount that is set aside through this reserve for the stock bonus plan, in the event that the bonus and salary committee does not commit a full amount of that in any particular year, does it remain available in future years for awards under the bonus stock program?

A. The stock may be carried forward, yes.

Q. And the amounts that have not been used in previous years are carried forward, are they not? Is that correct?

A. Will you state that again, please?

Q. I say, the amounts that are not awarded in any particular year can be, under the plan, carried forward to the following year or subsequent years and awarded during those periods?

A. That is correct.

Q. Now, will you tell us what the eligibility requirements are to come under the bonus stock program, sir?

Mr. Tierney: Is there any particular date?

By Mr. Owens:

Q. (Continuing) At the present time, sir?

A. Under the present bonus plan, upon action taken by the committee, a figure is established and for the present, the eligibility is $710 a month salary.

Q. Currently eligible are those employees receiving a monthly salary of $710 or greater?

A. That is right.

Q. Would you describe the manner, when these awards are made, in which they are paid out and received by the individual to whom they have been awarded?

[fol. 745] A. The awards, the first action that must be taken is to determine what portion should be cash or stock, or partly in cash or partly in stock. Presumably that is made very near the beginning of the year in order to acquire the estimated amount of stock.

I might say that this is a continuing process of determining how much stock we need in a year. Take, for instance, the year 1958 that has just passed. Under the plan, the bonus and salary committee recommends to the finance committee that stock be purchased for the bonus plan. Their action is based upon estimated earnings and the other determinations which they might have in mind, that is, are they going to distribute any bonus even though there are earnings in excess of 5 per cent? Is it going to be part of the total; all of the total? They must make some preliminary determinations.

In December of 1957, business was running along at a pretty good rate, and decision was made to buy stock at a definite amount per month, definite dollar figure. All our bonus figures are in dollars, not in shares.

The committee receives advice, the bonus and salary committee receives advice from time to time which indicates what the earnings are going to be, and they review their previous action.

In the case of 1958, we came around to March, and business was a little bit slower. Naturally, we had to cut back because the earnings did not seem to be in the offing for the year 1958 that had been estimated earlier.

Q. I take it, then, that the Bonus and Salary Committee makes recommendations as to the amount of stock that it [fol. 746] believes will be required to make that percentage of the awards that are going to be in stock?

A. Yes.

I would like to continue that in the year 1958 in March, they cut back the figure. They had another meeting two weeks later, and they cut back the figure——

Q. I don't now want to go into the details of each individual year.

A. No, this is just one year I am talking about.

Q. I don't want to go into the detail now of what happened in any particular year. I want to first get an outline of the scheme of operations, of the bonus plan.

A. I would just like to say this, that during the year there were eight different estimates.

Q. Occasions when they readjusted their estimate of the amount of stock that would be required, is that correct?

A. That is correct, and the previous year we had similar changes.

Q. Now, when this award is made to employees, it is made in cash amount, cash figure, the amount of the bonus?

A. Yes, like $5000.

Q. And the amount of that dollar figure that is awarded in stock and the amount that is awarded in cash varies, does it not?

A. That does, yes.

Q. So that it is fair to say——

A. Actually, the employee is told he has been awarded so many dollars in cash and so many shares of General Motors common stock which would be earned out in accordance with the bonus plan over a period of five years, if the amount is $5000 or more.

[fol. 747] Q. Would you tell us what that earning out arrangement is, sir?

A. That is a provision that requires continuous service of any employee for a period of up to five years, and it does have provisions for people who die, people who are released, and people who quit.

Q. Take an example of someone who receives an award of $5000. How much of the $5000 would he obtain in the first year, that is, at the time the bonus is awarded?

A. We have to go to one other feature of the plan. If he is a man who receives, who is not a participant in the stock option plan, then the $5000 would be paid in this manner: The portion of the bonus that was determined to be cash and the portion that was determined to be stock would be paid each one-fifth per year of the amount so specified.

Q. The first year he would get one-fifth of his total award?

A. That is right.

Q. And, generally speaking, in order to qualify for the remaining four-fifths, as each of the sucessive years came by, he would normally have to be still in the service of the corporation?

A. In the year, of course.

Q. So that the last increment of the award would not become fully vested in the employee until five years had elapsed from the date of the award?

A. That is right.

Q. He receiving an increment in each year of 1/5th of the award?

A. You asked for the particulars of the plan. I must say that the proportion of stock and cash varies between bonus awards. In other words, in the past year bonus awards of $5,000 were paid, 75 per cent in stock and 25 per cent in cash. [fol. 748] As the award becomes larger for the more responsible positions, the amount of stock becomes smaller.

Q. The percentage of the total award, then, is paid in stock?

A. Becomes smaller.

Q. As the amount of the bonus increases?

A. The proportionate amount of the individual award increases, the amount of the stock decreases. This is in order to permit the man to hold as much stock as he can and give him cash to pay his income tax because when these installments are delivered, they are subject to Federal and State income taxes immediately.

Q. That is, the income tax liability for the whole amount of the award attaches at the time of the award rather than when he earns it out?

A. No. I say, as the installments are delivered, it becomes taxable in the year in which they are delivered.

Q. So one-fifth of his award for 1954 would become taxable in 1954, one fifth in 1955, '56, and so on?

A. It will be delivered to him, and he will treat it in his tax return of that year.

Now, I have illustrated to you how a bonus would be paid for an individual who was not a participant in the stock option plan.

In the case of a stock option participant, there were some 250——

Q. Let me interrupt you, Mr. Russell, in order that I may develop this in what I think is a pattern that would make it simpler to follow.

I take it that so far our discussion has related solely to the bonus stock plan. When that plan was amended by stockholder action in 1957, they added a new feature to it, did they not, called a stock option plan?

A. That is right.

[fol. 749] Q. That is available to a much more restricted number of officers or executives of the corporation than those that are eligible under the bonus stock plan?

A. Approximately 250 executives. There were some 13,000 total bonus awards.

Q. 13,000 bonus stock awards and only 250 under the stock option plan, is that correct?

A. There were only 250 selected.

Q. 250 selected?

A. That is right.

Q. That was for the year ending 1958?

A. The year 1957. The year 1958 has not yet been determined.

Mr. Owens: I will ask the reporter to mark for identification Government Exhibit 172, a document which is identified as Table A, showing the number of shares of General Motors common stock purchased by or for the General Motors Corporation for the General Motors bonus plan during each of the years 1948 through 1957, and during the period from January 1, to October 27, 1958.

(Whereupon said document was marked Government Exhibit 172 for identification.)

Mr. Tierney: If the Court please, has he marked this for an exhibit?

Mr. Owens: Yes, it has been marked Government Exhibit for identification 172.

Mr. Tierney: Well, this is the first opportunity we have to see it. We object to it for all reasons until we have a chance to study it.

Mr. Owens: I think, Mr. Tierney, if you allow me to develop what it is and what it shows, that perhaps you might withdraw your objection.

[fol. 750] Mr. Tierney: Very well.

The Court: The Court will reserve its ruling for the present.

By Mr. Owens:

Q. Mr. Russell, in connection with the trial of this lawsuit, was your deposition taken on January 8th of this year?

A. Yes, sir.

Q. In that connection, did you receive a subpoena duces tecum directing you to produce certain documents?

Mr. Tierney: I do not know as he did.

By the Witness:

A. I do not recall receiving any.

By Mr. Owens:

Q. Well, were there documents produced by the General Motors Corporation at the time and in connection with the taking of your deposition?

A. Yes, I believe there were. There were certain exhibits put in while my deposition was being taken.

Mr. Owens: By way of explanation for the record, Your Honor, I would like to point out that the information contained in Column 1 of this exhibit is taken from the documents produced at the taking of the deposition of Mr. Russell. They are records of the General Motors Corporation reflecting the amo ats, that is, the number of shares and dollar value of the shares at their acquisition cost of purchases of outstanding common stock acquired for the Bonus Plan.

Mr. Tierney: If the Court please, I think we can save time. We cannot now say whether this is accurate or not until we have a chance to check it.

[fol. 751] The Court: Well, the Court will reserve its ruling until you have an opportunity to inspect it and check it.

Mr. Owens: I think at the taking of the deposition of Mr. Russell, Mr. Metzger, the Government attorney who took that deposition asked Mr. Tierney on page 5 of the transcript—it says:

"These documents will generally indicate t purchases and awards on the bonus plan for each year from 1949 th ugh October 27, 1958. I would like, if it is

agreeable, a stipulation to the effect that these documents are what they purport to be and that the figures contained therein are reasonably correct."

Mr. Tierney: There is no doubt about that.

Mr. Owens: (Reading)

"Mr. Tierney: That is agreeable."

Mr. Tierney: We have no doubt about that, but this document is not identified or offered. It is a compilation Mr. Russell did not make and I do not know whether it is correct or not.

Mr. Owens: I am perfectly willing to have you check the accuracy of the figures.

The Court: Well, the Court has already ruled on it.

Mr. Tierney: The Court has ruled on it.

Mr. Owens: If Your Honor please, I would like to inquire of the witness with respect to this document, and if there is subsequently objections on the part of Mr. Tierney as to its admissibility, after he has had a chance to verify the figures, I think he could probably have the testimony stricken, but for convenience of the Court and the witness, I think it would be easier to develop this matter now than to return to it and have to recall the witness.

[fol. 752] Mr. Tierney: I can state, already, your Honor, that this document is not correct, and I object to having the witness examined with respect to a document which, Number 1, has not been offered in evidence, and Number 2, is obviously incorrect.

The Court: Well, he has offered it, but the Court has reserved its ruling.

Mr. Owens: Do you have any objection to my inquiring?

Mr. Tierney: Yes, I object to you inquiring about what is in an exhibit that is obviously not the subject of an inquiry.

The Court: Can this be deferred until the afternoon? Maybe you can take it up with the witness during the noon hour.

Mr. Tierney: Yes, we would be happy to do that.

The Court: I think that would be the practical thing to do under the circumstances.

Mr. Tierney: We can possibly do it during the recess, Your Honor.

The Court: Yes.

By Mr. Owens:

Q. Mr. Russell, you have testified that generally the purchases made for the Stock Bonus Plan were made on the New York Stock Exchange. Are you acquainted with whether or not from time to time other purchases were made in blocks off the Exchange?

A. There have been several occasions in the last ten years when stock was purchased from sources other than the New York Stock Exchange.

[fol. 753] Q. Do you recall the purchase of some 30,000 shares from the Algoma Steel Corporation, Ltd.?

A. We did purchase 30,000 shares from the Algoma.

Q. Was that an uncommonly large amount of a purchase on an off-the-Exchange basis?

A. That would be larger than we ordinarily make, and we have only had a few occasions, as I have said.

Q. Would you indicate, if you know, why there were few occasions relatively considered when you purchased them in blocks off the Exchange?

A. We never had any difficulty whatsoever getting the stock through the regular channels of the New York Stock Exchange, and I think this came as an offer as two or three or four others, I don't know how many, came from time to time. It was a very, very small part of our total.

It is not of any consequence. We would have been able to obtain stock without these purchases.

Q. Do you know whether or not you had to pay commissions generally in connection with these block purchases off the exchange?

A. No, I think in a case like that there was no commission. It was probably the equivalent of what we buy on the market if we could buy the average price of the day, the average of the high and the low.

That would set the average price for that date. No commission.

Q. So it does not make any difference to the Stock Bonus Fund whether it acquires them off the market or on the market, is that correct?

A. There isn't any restriction in the plan as to where they must be purchased except that it must be reacquired stock.

Q. Except that it must be reacquired stock?

A. Yes.

Q. Would you tell us if that is a limitation in the plan as [fol. 754] it is presently constituted?

A. The plan provides for reacquired stock only.

Q. So that under the plan as it is now set up all the General Motors stock to be paid out in bonuses is to be reacquired stock, is that right?

A. That is right, sir.

Q. Is it accurate to state that the Chairman of the Financial Policy Committee makes these purchases on the recommendation of the Bonus and Salary Committee?

A. I would say that it would be correct to say that the Bonus and Salary Committee recommends to the Finance Committee, and the Finance Committee empowers the Chairman of the Finance Committee to make these purchases, in particular dollar amounts.

Q. That has been the practice for the Financial Policy Committee to empower its Chairman to make the purchase in accordance with the recommendations of the Bonus and Salary Committee?

A. And he reports back monthly, yes, as to what he has acquired during that month.

Q. I would like to turn now, Mr. Russell, to the Stock Option Plan which we adverted to a few minutes ago. Would you tell us when that became effective, sir?

A. The Bonus Plan was up for consideration of the stockholders at the meeting of May, 1957. There was presented to the stockholders a modified Bonus Plan, which had been the result of considerable study.

This plan was put into effect for the year 1957.

Q. So that its effective date would be January 1, 1957?

A. That is right.

Q. And you stated, I believe, that in accordance with that plan 250 executives of the corporation had the election to participate in it if they wanted to, or not, is that right?

[fol. 755] A. No. Approximately 250, if selected, have no choice; they must be in this plan.

Q. You mean if they are selected to participate in the Stock Option Plan, they have to participate in that rather than the Bonus Stock Plan?

I know there is a relation between them, but they would come under the Stock Option features of such a plan rather than the bonus award?

A. Would it help you if I gave you an example of how it works?

Q. Yes, I think so.

A. Supposing a man who had been selected, an executive, as one of these approximately 250, were given an award, a bonus award, of, say, $30,000. He would also receive under the plan what we call a contingent credit, and that credit is equivalent to one-third of the amount of the bonus award.

In this case it is one-third of $30,000, making a total, of the two, a combined total of $40,000.

In the case of the $30,000, the full amount is paid over a period of five years, in cash. The contingent credit is not paid to him, to the individual—assuming that the man continues in employment—for a period of ten years, in which case it is then paid out in installments of one-fifth a year.

The Stock Option Plan is related to the contingent credit in this manner: This individual we are speaking of has a contingent credit of $10,000.

In the case of the year 1957, the award value of the bonus was forty-one. Let us just round it out to forty, and we can work from there.

Q. May I suggest, Mr. Russell, an example in round figures that may perhaps illustrate this a little easier?

Let us take a man who has an award of $100,000, a total [fol. 756] award.

A. I think it would be easier to keep to the smaller figures.

Q. Will you follow my example?

A. I will try to.

Q. Now if he received a total award of $100,000 and that was $75,000 in cash and $25,000 in stock——

A. Contingent credit.

Q. Right. Now if it was the ordinary plan, he would get his stock, the $25,000 in stock, one-fifth of that amount, of the stock that that would buy, he would get each year.

A. But he wouldn't get 25 per cent of the stock under the ordinary plan, because, as I pointed out to you earlier the stock decreases with the size of the award, and we would have to work it out in dollars.

Q. Well, just in the example here, we have $100,000. He is getting $75,000 in cash and $25,000 in stock.

A. I just wanted to make the point that that is not what the award would be if it were $100,000.

Q. But just for the purposes of the example; we are not interested in whether that is the particular proportion in any particular case.

A. Well, we will assume that, but I will say it is not the example that we would be using.

Q. We are assuming a hypothetical case here, Mr. Russell, and not the actual figure.

Now that $25,000 in stock, if it were under the Bonus Plan, he would get one-fifth of the amount of stock he was entitled to each year?

A. For five years, if he continued in service.

Q. Or at $50 a share, he would get 500 shares of stock.

In the first year he would get 100, in the second year 100, in the third year a hundred, and so on, is that correct?

A. In a hypothetical case, yes.

Q. Now that 100 shares of stock, under the Stock Option Plan would be what you call a what—"contingent"——

A. Contingent credit—a full $25,000.

[fol. 757] Q. That would be a contingent credit?

A. It would be a contingent credit.

Now we are on an actual basis, where it would be $75,000 cash and $25,000 in contingent credit, which would be represented by a definite number of shares of stock, and we go back——

Q. In this case, if you will assume the shares had a value of $50—$25,000 in stock; that is 500 shares of stock that he will have a contingent credit of 500 shares of stock?

A. That is correct.

Q. Now if he is under the Stock Option Plan, what is the option that he receives with respect to the contingent credit of 100 shares that he gets in the first year?

A. He gets an option to buy three times the number of shares represented by the contingent credit; in this example, 500 times 3—that is 1500 shares.

This option is given to him at the fair market value at the date of the option, 100 per cent of the fair market value on the date that the option was granted to him. He cannot exercise the option for eighteen months, and the option

expires in ten years from the date of its being granted to him.

Q. So if I understand you correctly now, at the end of the first year, he has a contingent credit of 100 shares. That entitles him or gives him an option to purchase on that 100 shares of contingent credit 300 shares of General Motors; right?—at the fair market value at the time you ordered?

A. Could we keep it to the example we are using? That is a man had 500 shares in the contingent credit, and after eighteen months he could exercise the op on for 1500 shares.

[fol. 758] Q. The full amount?

A. The full amount, or any part of it.

Q. So that he can exercise the option for the full amount at any time, and need not wait until the end of the five years or at the various five-year increments?

A. Any time after eighteen months, but before ten years had elapsed from the time the option is granted.

Q. What does that mean with reference to the amount of General Motors stock that is required to be available against which he can exercise the option?

Do I make myself clear, sir?

A. No, sir, you don't.

The Court: The Court stands recessed for ten minutes.

(A short recess was thereupon taken.)

The Court: Did you have the opportunity to do the checking?

Mr. Tierney: Yes, Your Honor. I haven't had a chance to clear with counsel.

Mr. Owens, I think perhaps we can get on with this and get Exhibit 172 offered.

On your Exhibit 172, you have made adjustments for the splits, is that correct?

Mr. Owens: That is correct.

Mr. Tierney: In other words, where the par value is 10, you multiply it by 6; where the par value is 5, you multiply it by 3?

Mr. Owens: 3, that is correct.

Mr. Tierney: We will have an exhibit which will show the actual moneys spent for stock and the actual stock received, and we will offer that in due time.

[fol. 759] Mr. Owens: I take it then that you are agreeable to our offering in evidence Government Exhibit 172?

Mr. Tierney: Calling the witness' attention to the fact that you have adjusted the splits in those years. For example, in——

Mr. Owens: Well, in 1950 there was a split of two for one in the stock, and in 1955, it was again split on a three for one basis.

Mr. Tierney: That is right. Your Exhibit 172 does not reflect the actual number of shares that were bought at that time.

Mr. Owens: But it reflects an accurate adjustment of the purchases of shares so that it is a comparable figure between now and then.

Mr. Tierney: It is not comparable, but just so we understand what you have done and the witness understands. We are trying to get through.

Mr. Owens: Thank you, Mr. Tierney.

The Court: It is received in evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit 172.)

By Mr. Owens:

Q. I will come back to that in just a minute.

I think it will serve our convenience to continue with our stock option plan. We are talking about a contingent credit of 500 shares of General Motors, and you explained that that gave the person receiving the award the right or the option to purchase three times the amount of the contingent credit in terms of stock, or fifteen hundred shares of General [fol. 760] Motors stock, is that correct?

A. At the fair market value at the date of the option

Q. So that it is different or distinguished from the bonus stock plan in that under the bonus stock plan only 500 shares of General Motors stock would have to be available to pay out over the 5 year period to the recipient, whereas under those eligible for the stock option features of the plan, there would have to be available 1500 shares of General Motors stock, is that correct?

A. No, it isn't correct. I think it should be kept in mind that if the stock is never exercised, that is, the option, then there is no need for the stock.

Q. But to the extent that the option is exercised, it would require three times the availability of shares in General Motors stock?

A. If the option is exercised, yes.

Q. Am I correct in understanding that this would offer some atfractive benefits to persons entitled to this from a tax standpoint?

A. Yes. I think that over the long pull, with the continued prosperity of the company, that it could result in greater benefits. At the same time, it would provide that under the present tax laws that the profit would be capital gains rather than ordinary income, which would be the tax applied to the contingent credit when it was delivered.

Q. So that, as I understand, to set up this plan, you anticipate or contemplate that it is probable that they are going to avail themselves of the right to exercise this option; that is, the benefit that is conferred upon them by making them eligible under this Stock Option Plan?

A. I would like to say we hope that prosperity will continue so that they may choose to elect——

Q. Assuming a continuous prosperity of General Motors, [fol. 761] is it your judgment from your acquaintance with this plan that the individuals will exercise their options in general?

A. I must admit I can't predict that because we haven't had the plan in effect for the full 18 months, so I don't know whether anybody or all are going to exercise their options.

Q. But on the basis of your studies, in connection with setting up the plan, that is what was anticipated, was it not?

A. It was anticipated it would be either one or the other. Take a man who has only two years to go, if he is, say 63, and gets the option, then he may feel that it would be better to get the 500 shares over five years than to take——

Q. But over the main number of employees here, 250, can you state whether you anticipated on the basis of your studies that in most cases they would exercise their right or this option to purchase three times the number of General Motors shares than they would have been eligible for under the ordinary bonus stock plan?

A. It wasn't neccessary to anticipate it. All we could do was hope.

Q. I didn't ask you whether it was necessary or not. I asked you whether you did anticipate?

A. We did not anticipate.

Q. You set up the plan without any anticipation as to the likelihood that it would be availed of by the executives who would be benefited by it?

A. Without any anticipation as to the number of people or the number of shares that would be exercised.

Q. You mean anticipation in precise amounts, or even in a general way, you did not anticipate whether these options [fol. 762] would be exercised in normal course, assuming continued earnings and profitability of the General Motors Corporation?

A. I can't say that I saw any figures that would project how many would be exercised at any time. Provision is made for——

Q. You stated that there was anticipated tax advantage to enable them to exercise the stock option, did you not?

A. I said that there is a tax advantage if the stock increases sufficiently to make it advantageous, because—there is one point we haven't discussed, and I would like to inject it at this point—when a man decides to use the stock option plan, he gives up something, and in this case, if he exercises the option for the full 1500 shares, he would have to give up $25,000.00 of stock represented by the contingent credit.

Q. We understand that.

A. That isn't in the record. I just wanted to put it in there.

Q. But I gather it is your testimony, as I understand it now, that you set up this plan to provide special incentives for your top executives, which is a much more restricted class in the most recent award, 250, as against some 13,000 under the Bonus Stock plan.

You set up this plan, and you state it is without any anticipation as to whether these options would in all probability be exercised.

A. Without any anticipation as to the number of individuals who would exercise and the number of shares that they might exercise of their option. We did set up four million shares of stock, which could be newly issued for the purpose of this plan, but there is no assurance that any or all of it will be used.

Q. Is it your testimony that you had no anticipation as to whether or not these stock options would be utilized?

[fol. 763] Mr. Tierney: I think he has explained that at least three times.

The Court: Sustained.

Q. Now, in making available the stock to be acquired pursuant to these options, do you know, sir, what the source of the stock to be made available would be under the plan?

A. It could be either newly issued or reacquired.

Q. Either newly issued or reacquired, is that right?

A. That is right.

Q. In the event that the options were not exercised and the officer or executive receiving the award received the amount that he would otherwise have received under the bonus stock plan, what would be the source of the stock to be furnished in response to that demand for General Motors stock in accordance with the plan?

A. That stock for the contingent credit would be acquired in the year that the other stock for the bonus of that year——

Q. That would come from reacquired Treasury stock?

A. That is right.

Q. This is distinguished from the stock subject to the option which can be either newly issued or Treasury stock?

A. That is right.

Q. Is it accurate to state, sir, that to the extent that the options are exercised there would be a requirement for the corporation to make available for delivery three times the shares of stock that it would deliver under the regular bonus plan?

A. Under the contingent credit, yes.

Q. And is it also true to state that under the stock option plan, in no event will the amount that the corporation is required to make availab , whether treasury or newly is-

[fol. 764] sued, be less than the amount that would have been available under the regular bonus stock plan?

A. I think you have to divide that up into two questions. We have to go back to the point that the options may never be exercised; therefore, the amount that is set up in the contingent credit would be delivered over a period of five years after the options expired.

In that case there would not be more stock used.

Q. But it could not be less?

A. The minimum would be the number of shares——

Q. Under the bonus stock plan?

A. Under the contingent credit.

Q. And that would be equivalent to what would have been required under the bonus stock plan?

A. That is right.

Q. So that——

A. I have to go back again because——

Q. Well, I want the record to be accurate, Mr. Russell.

A. The contingent credit stock, the twenty-five thousand dollars. as I have said before, is not exactly the same number of shares as if he were a participant only in the bonus plan. That would vary.

Mr. Owens: I would like to have marked for identification Government Exhibit—what is the next number?

The Reporter: 173.

Mr. Owens: —which is identified as, "General Motors Corporation Notice and Proxy Statement. Notice of Annual Meeting of Stockholders to be held May 24, 1957."

It contains therein a description commencing on Page 21 of the operation of the stock option plan, and in addition,——

[fol. 765] Mr. Tierney: Just a moment. You have not made your offer yet, have you?

Mr. Owens: No.

Mr. Tierney: Well, it is obvious that this proxy statement has many, many things that are even more remote from this case than what you are going to offer and I think it is terrible to clutter this record up with all the proxy statement. So, I suggest you point out what you are going to offer. You have got the bonus plan in as an exhibit. Exhibit No. 171.

There are many things in that that have less to do with this lawsuit.

Mr. Owens: If Your Honor please, we are offering this document in connection with our showing of the requirements of the General Motors bonus stock plan and their stock option plan for General Motors stock to be made available by the General Motors Corporation

I think that the description in the proxy statement as to the operation of those plans would serve to supplement and amplify the testimony of Mr. Russell with respect to the manner in which they operate.

I therefore offer this exhibit.

Mr. Tierney: Well, I object to all that part of this exhibit that has no relation to what Mr. Owens has just said it is offered for. There is a great mass of material that has no relation.

The Court: Well, I have not seen it, gentlemen, so I will reserve my ruling on it until 2:00 o'clock. Take it up with counsel and see if you can agree on the portion that is to be received.

[fol. 766] I will reserve my ruling in the meantime.

Mr. Owens: Well, I will indicate at the present time, Your Honor, the sections that I would like to have made a part of the record—the material beginning on page 15 therein and going through page 24; however, I would like to point out, Your Honor, that I understood our pretrial order provided that if any party desires to offer the entire document he may do so if it is a single integral document.

There is contained herein, Your Honor, a description of the manner in which the bylaws are to be changed to carry out the plan as described; and I think it would serve a useful function if it were made a matter of record in this lawsuit.

Mr. Tierney: You are offering just that part?

Mr. Owens: No.

I will again reiterate my offer of the entire document, and calling particular attention to pages 15——

Mr. Tierney: If the Court please, Exhibit A here is already in evidence.

Mr. Owens: (Continuing)——through 27.

Mr. Tierney: Yes, already in evidence. Then the rest of it has no relation to this.

We have no objection to the offering——

Mr. Owens: Mr. Tierney,——

Mr. Tierney: I address my remarks to Your Honor.

Mr. Owens: I would like to explain to Your Honor and to Mr. Tierney that I think for a full understanding of the operation of these plans, all the material, discussion and description in amplification that is contained in that proxy statement should be admitted.

[fol. 767] The Court: Well, let us proceed.

Mr. Owens: I would like to have the Reporter mark for identification Government's Exhibit 174, which is entitled, "General Motors Stock Option Plan." It is a pamphlet published by the corporation, containing a further amplification and discussion of the operation of the Stock Option Plan.

Mr. Tierney: That is already in evidence. It is already in as part of Exhibit 173. I don't see why you want it in two or three more times.

Mr. Owens: Do you know for a fact whether this is an identical description of the plan as is contained——

Mr. Tierney: That is my understanding.

Mr. Owens: Do you know, sir?

Mr. Tierney: Yes, I say it is. If it isn't, we will make any corrections necessary.

The Court: My suggestion is that you withdraw it until you make a comparison. If it is already in, there is no use in introducing it a second time.

By Mr. Owens:

Q. Mr. Russell, I want to turn now to the Savings Stock Plan of the General Motors Corporation. Would you tell us what that is, sir?

A. That plan was adopted in 1955. During the spring and summer of that year, we worked on the plan, and we offered it to the hourly workers—to the bargaining units of the hourly workers, and it was turned down.

The plan requires that you put up a definite amount each month—in the present plan up to ten per cent of the man's salary.

[fol. 768] Q. Do you know what the effective date of the plan was, sir?

A. It went into effect October 1, 1955.

Q. Is that the United States Savings Stock Plan?

A. That is right, yes.

Q. Was a similar plan placed into effect for Canada?

A. Yes, at a later date.

Q. Do you know what that date is, sir?

A. Several months later.

Q. Does April 1, 1956 refresh your recollection?

A. It would be about that, yes.

Q. What are the requirements for eligibility under that plan?

A. The plan was adopted for salaried employees who had one year of service; and, as I said, they may put up to ten per cent of their salary in the plan.

Q. Now is that plan applicable to employees whose salaries and bonuses are fixed by the Bonus and Salary Committee?

A. It is applicable to all salaried employees.

Q. To all salaried employees?

A. Yes.

Q. Do you know what the purpose of that plan was, sir?

A. Well, the purpose was very much like other plans—to make the individuals participants in the success of the business; and it also provided a savings feature for the participants.

Q. So, as I understand it, it allowed the employees to acquire General Motors stock, and in that way participate in the business?

A. In the success of the business, yes.

Q. Now what was the employee's contribution to this Savings Stock Plan, sir?

The amount that he is permitted to deposit?

A. Ten per cent of his salary.

Q. Up to ten per cent of his salary?

A. Up to ten per cent of his salary.

Q. Would that include any cost of living allowance, too?

[fol. 769] A. I think it does, yes.

Q. And what is the employer's contribution to this Savings Stock Plan?

A. For each dollar that the salaried employee puts in the plan, the corporation puts up fifty cents.

I might say that we start these on the basis of classes. We have a class in 1955, a new class in 1956, and so on. We now have a class for 1959.

Q. So for each year an employee elects whether he wants to participate in the plan for that year?

A. He does. He makes an election.

Q. And all those electing are considered to be in that class of the year for which the election is made, is that correct?

A. That is right.

Q. Now, you stated, I think, that for every dollar that the employee puts up, the General Motors Corporation contributes fifty cents, is that right?

A. That is correct.

Q. And do you know to whom these funds are delivered, sir?

A. The funds are delivered to a trustee.

Q. And are there directions in the plan as to what the trustee shall do with the funds thus delivered to him?

A. Yes. The employee's dollar is invested fifty cents in Government securities, and fifty cents in General Motors common stock.

Q. How much of the employer's contribution is to be invested in General Motors stock?

A. The complete fifty cents.

Q. And are those both requirements as to the investment of the income or deposits that the trustee received?

A. Yes, as the plan is now constituted. Of course, it is subject to amendment.

[fol. 770] Q. So that for every dollar and one-half that is placed in the plan, one dollar, or two-thirds of the total amount that the trustee receives is required to be invested in General Motors stock?

A. That is correct. At the present time.

Q. Now, do you know how the trustee is to acquire the General Motors stock which he is required to invest two-thirds of the total income in General Motors stock?

Do you know how that is made available to him?

A. You used the word "income." I am wondering what you mean by that—two-thirds of the income?

Q. What word do you use to describe the employer's contributions, plus the employee's contributions?

A. I'd say the combined deposits of the plan.

Q. How is he to acquire the General Motors stock in which he is required under the plan to invest two-thirds of the combined deposits?

A. I think we went over that on the basis that it may be either newly-acquired or it may be Treasury stock; but the corporation would make the decision as to——

Q. The corporation has the right to make an election?

A. Yes.

Q. As to whether it will issue newly-issued stock or acquire Treasury stock, is that right?

A. That is right.

Mr. Owens: I will ask the Reporter to mark as Government's Exhibit 175, for identification, a proxy statement of the General Motors Corporation, in reference to a notice of a special meeting of stockholders to be held September 23, 1955.

(Thereupon said document was marked Government Exhibit 175, for identification.)

[fol. 771] By Mr. Owens:

Q. Do you recognize this document, Mr. Russell?

A. Yes. "Notice of Special Meeting of Stockholders to be held September 23, 1955."

Q. Does it contain there any description of the manner in which that plan was intended to operate?

A. Correct, it does.

Q. To the best of your knowledge, is that an accurate description?

A. Yes, I would say it is.

Q. Was a proposition advanced at that stockholders' meeting to adopt this Stock Savings Plan?

A. Item 3 of the face of it indicates that.

Q. Do you know whether that was adopted, sir?

A. Yes, it was adopted.

Mr. Owens, I offer Government's Exhibit 175, Your Honor.

Mr. Tierney: I object to the exhibit, except from page 22 on. All of the first twenty-one pages have no relation to this matter at all, Your Honor. It is just cluttering up the record.

The Court: If it isn't relevant, why did you introduce it?

Mr. Owens: If Your Honor please, it also shows the manner in which the bylaws have to be changed in order to place this plan in effect, and I think that we would be remiss if we did not have in the record all of the material that bears upon the operation of this plan, so that at the conclusion of this hearing it can be referred to in connection with the brief to be submitted by the Government.

[fol. 772] Mr. Tierney: May I ask Counsel a question?

The Court: You may.

Mr. Tierney: Does anything on pages 4, 5, 6, 7, 8, 9 or 10 have anything to do with what you are talking about now?

Mr. Owens: I think, Your Honor, under the pretrial order, we have the right to introduce the entire document. It also has information contained therein, Your Honor, that bears upon matters previously in evidence, such as the pension, retirement pension program, that we have previously offered exhibits in connection with.

It also has information in connection with the General Motors Bonus Plan.

Mr. Tierney: Your Honor, the evidence, I should think, should have some pertinence to what you are considering here.

If Your Honor will look at the first few pages, you will see that it just has nothing to do with this.

I don't want to prolong it, but it is so obvious. If Counsel will pick out what he wants to offer, very well. But we will object to everything that has no relation to this case.

It is up to you, Counsel, to pick out what you want, and we will let it go in; but this is a shotgun offer, Your Honor, at the least.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 175.)

By Mr. Owens:

Q. Do you know, Mr. Russell, what percentage of the [fol. 773] employees eligible are participating in this Stock Saving Plan?

A. About 83 per cent of those eligible.

Q. About 83 per cent of those eligible?

A. Correct.

Q. Is it true, as it was true of the Stock Option Plan, that the corporation has the option to issue either newly issued stock or treasury stock to fulfill the requirements under the plan?

A. That is correct.

Mr. Owens: I would like to read into the record, Your Honor, the Government's interrogatory to the defendant General Motors, "Interrogatory No. 4, and General Motors' answer thereto."

The interrogatory of the Government, No. 4, reads as follows:

> "Q. State separately the number of shares of General Motors capital stock purchased for General Motors Saving Stock Purchase Program during each of the years in which the program has been in operation, and state the total amount of such capital stock which was newly issued stock."

In its answer of December 12, 1958, General Motors responded as follows—the first column is headed "Period of Time," and then opposite "Period of Time there is a column headed "Number of Shares."

For the three months ended December 31, 1955, 150,750 shares; for the 12 months ended December 31, 1956, 986,873; for the 12 months ended December 31, 1957, 1,167,973; for the 9 months ended September 30, 1958, 1,011,358.

The total amount of such capital stock which was newly issued was 3,316,954.

Going back now to this table, Mr. Russell, do you have a [fol. 774] copy of that table, Government Exhibit 172 for identification?

The Witness: I only have 170, and this other one bears no number.

Mr. Owens: That is Government Exhibit 172 for identification. It is entitled Table A, showing columns 1 and 2.

Would you take a moment to examine that document, Mr. Russell?

I would like to have the record reflect that column 1 of that document shows in terms of 1⅔ par value stock, the number of shares of General Motors common stock purchased by or for the General Motors Corporation for the General Motors Bonus Plan through each of the years 1948 through 1957 and during the period of January 1 through October 27, 1958.

In addition, column 2 shows the number of newly issued shares of General Motors common stock sold by General Motors to the trustee of the General Motors Saving Stock Purchase Program during the last three months of 1955, all of 1956 and 1957, and the first nine months of 1958.

The figures with respect to the Savings Stock Purchase Program for the periods thereof, 1955 through 1958, are the

same figures that I read from the answer of General Motors to the interrogatory propounded by the Government.

Column 3 is a total of columns 1 and 2, and represents for each of the years from 1949 through 1958 the total amount in shares of General Motor stock that was acquired or issued by the General Motors Corporation in response to its obligations under the Bonus Plan and under the Savings Stock [fol. 775] Purchase Plan.

Mr. Tierney: Is that a statement for the record?

Mr. Bushby: What is this?

Mr. Tierney: Are you testifying?

Mr. Owens: I am describing the document, Mr. Tierney, with respect to what it shows.

Mr. Tierney: You don't contend that the total of Column 3, 25,233,000 is an accurate statement of the number of shares that were actually bought, do you?

Mr. Owens: If you understood what I said, I said it represents the number of shares and the number of shares newly issued, the total of the two.

Mr. Tierney: I understand you to say that the total was 16 million.

Mr. Owens: I didn't read any figures, to my recollection.

Mr. Tierney: You indicated—well, that is all.

Mr. Owens: I offer Government Exhibit 172, Your Honor.

Mr. Tierney: I thought it was in, with the understanding that we were going to put in an exhibit to explain what the facts were.

The Court: Yes. It is admitted.

By Mr. Owens:

Q. Mr. Russell, are you familiar in a general way with the judgment that the Government has proposed in this suit?

A. In a general way, yes, I am.

Q. Do you understand that a certain portion of the 63 million shares of General Motors stock held by du Pont is [fol. 776] to be distributed in kind pro rata to the du Pont stockholders over a 10-year period?

A. Yes, I believe that is so.

Q. Do you also understand there are some approximately 19 million shares required to be sold and the proceeds paid to certain du Pont stockholders who would, under the judg-

ment, be ineligible to receive the General Motors stock in kind?

A. Yes, I understand that.

Q. And that figure of approximately 19,200,000 that would be required to be sold, if it were sold uniformly over the 10-year period, would amount to approximately 1.92 million shares each year.

Do you follow that, sir?

A. 1.92? Is that 1,920,000?

Q. That is correct.

A. All right, thank you.

Q. Now, if you would look at Table A sir, and tell us what the amount of the purchases of outstanding common stock for the bonus plan were by the General Motors Corporation for 1957.

Mr. Bushby: I object. We can read the exhibit, and I object to it as having no bearing.

Mr. Dallstream: I would like to object to it on the further ground that it must be perfectly obvious that the same purchasing power can't be in two markets. It either is going to be in the market that normally exists for the shares of General Motors to take up the shares that normally come on the market as it has in the past ten years, or it is going to be taken out of that market and put into buying du Pont distributed shares, and it can't be in both.

Mr. Owens: I understand that this, which I consider to be argument, Your Honor, goes to the weight to be attached to the showing, as this document shows that the Government [fol. 777] plan would require approximately 1,920,000 shares to be sold, and the requirements in 1957 of the General Motors bonus plan were in excess of one million shares.

Mr. Bushby: If Your Honor please, I object to the Government making argument through this witness. The exhibit is in, and it speaks for itself.

The Court: Sustained. Reserve your argument for the final conclusion of the trial.

By Mr. Owens:

Q. Sir, would you give us the figures for 1957 of the amount of newly issued common stock for the Savings Stock Plan from Government Exhibit 172?

A. The Government exhibit indicates that 1,167,973 shares of common stock were issued.

Q. Does that indicate to you, sir, that the requirements of the General Motors Bonus Plan and the Stock Savings Plan could absorb all or substantially all of the stock that would be required to be sold under the Government's judgment?

Mr. Bushby: He is asking a conclusion of this witness. I object.

The Court: Sustained.

Mr. Owens: No further questions, Your Honor.

May I offer one other exhibit, Your Honor, before concluding?

The Court: All right.

Mr. Owens: I would like to have marked for identification Government Exhibit Number 176, a document further identi- [fol. 778] fied as Table B, showing the number of shares of General Motors common stock awarded to General Motors personnel under the General Motors Bonus Plan during each of the years 1948 through 1957.

The source of the information contained thereon with respect to the number of shares awarded is based upon the documents furnished at the taking of the deposition of Mr. George Russell on January 8, 1959.

(Thereupon said document was marked Government Exhibit 176 for identification.)

Mr. Owens: I offer Government Exhibit 176.

Mr. Tierney: Same objection.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 176.)

Cross-examination.

By Mr. Tierney:

Mr. Tierney: I will ask the reporter to mark this document as General Motors Exhibit No. 6 for identification, please.

(Thereupon said document was marked General Motors Exhibit No. 6, for identification.)

By Mr. Tierney:

Q. Mr. Russell, I show you the document marked for identification as General Motors Exhibit No. 6, and ask you if you have seen that before?

A. Yes, sir, I have seen this exhibit before.

Q. Was that prepared under your supervision and direction?

A. Yes, sir.

[fol. 779] Q. I notice in Column 1 there is given the years. Are those the years in which General Motors common stock was acquired or purchased?

A. Yes.

Q. Is that right?

A. This exhibit shows the years in which the stock was purchased.

Q. The second column shows the par value of the stock that was purchased?

A. No, sir.

Mr. Owens: What document is that?

Mr. Tierney: I will see if I have got it. Oh, I have got the wrong exhibit. It should be Exhibit No. 7. Would the reporter mark this General Motors Exhibit 7 for identification?

(Thereupon said document was marked General Motors Exhibit 7 for identification.)

By Mr. Tierney:

Q. Now, I show you this exhibit marked General Motors Exhibit No. 7 and ask you if you have seen that before.

A. Yes, I have seen this exhibit before.

Q. And was that prepared under your supervision and direction?

A. Yes, sir.

Q. And is it accurate?

A. I believe it to be accurate.

Q. Now, then under the first column we have the years. What do those years indicate?

A. The years 1938 to '58 are shown individually. The next column shows the par value of the stock, which indicates

for the period 1938 through '50 the par value was then $10, continued to part of 1955 at $5 par value.

The latter part of 1955, one and two-thirds was the par value, continuing through the year '58.

Q. Now, I call your attention to the third column. What [fol. 780] do those figures indicate?

A. They represent the dollar costs of the shares which were acquired. The usual way we purchase our stock is on a dollar basis rather than a share basis.

Q. And this schedule covers the period from 1938 through 1958, does it not?

A. That is correct.

Q. And in those 21 years what were the expenditures of General Motors for common stock of the General Motors Corporation, the total?

A. The purchases were $373,728,930.

Q. Now, in the last column what was the number of the total shares that were purchased?

A. We purchased a total of 6,674,490 shares.

Mr. Tierney: I offer in evidence this document.

Mr. Owens: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked General Motors Exhibit 7.)

By Mr. Tierney:

Q. I will relieve you of those.

Now, Mr. Russell, in the event the earnings of General Motors are not equal to 5 per cent of the net capital, there is no bonus, is that correct?

A. There could be no bonus, if they were not equal to 5 per cent of the net capital, as defined in the plan.

Q. In other words, the bonus is only possible in the event that there has been at least 5 per cent earned on net capital, and then it is limited within 12 per cent in excess of that, is that correct?

A. Yes. Stated another way, $260 million had to be earned last year before any bonus could be provided.

[fol. 781] Q. Now, what does the plan provide with respect to the proportion of bonuses in cash and in stock?

A. The plan provides that the bonus is to be made in cash or in stock, or partly in cash and partly in stock, determined by the Bonus and Salary Committee each year.

Mr. Tierney: Mark this, if you will, for identification.

(Thereupon said document was marked General Motors Exhibit 8, for identification.)

Mr. Owens: What number is this?

Mr. Tierney: General Motors Exhibit No. 8.

By Mr. Tierney:

Q. I show you this for identification. Is that an accurate compilation based upon the books and records of General Motors?

A. I believe it to be an accurate record.

Q. What does this exhibit show generally?

A. This shows in thousands of dollars, the nearest thousand, for the period 1938 to 1957, the General Motors Corporation bonus awards allocated between stock and cash.

Q. The second column is the total amount of the total awards, is that correct? The first column is the year?

A. The first column is the year. The second column is the total amount of value by dollars that constituted the bonus award for that year. The third column shows the award value, the dollar award value of the stock.

Q. And the next column under "Cash"?

A. That shows the cash that was represented by the award. The last column shows the stock as per cent of the total.

Q. Now, this would indicate that in the year 1939, 98 per cent of the awards—I mean, 98.4 of the awards was in stock, is that correct?

A. That is correct.

[fol. 782] Q. And in 1949, 20.3 per cent was in stock?

A. That is correct.

Q. And since 1949 it has been around 50 per cent in cash, is that correct?

A. Specifically, in 1957, 5.11 per cent.

Mr. Tierney: I offer in evidence General Motors Exhibit No. 8.

Mr. Bushby: I take it my standing objection goes to all exhibits through this subject, whether they are offered by General Motors or the Government?

The Court: Yes. It is admitted.

(Said document, so offered and received in evidence, was marked General Motors Exhibit No. 8.)

By Mr. Tierney:

Q. Is it to your knowledge that——

Mr. Owens: What number is this, Mr. Tierney? Excuse me.

Mr. Tierney: 8.

By Mr. Tierney:

Q. Is it to your knowledge a somewhat common practice for American companies to pay bonuses all in cash?

A. Yes, it is quite popular.

Q. Could you name us a few companies that do that?

A. Well, sometime during last year we made a study of the proxy statements, the most recent proxy statements we get from about 80 companies. 50 of them, I believe, or 51 paid wholly in cash.

Instances would be Inland Steel, International Harvester and, oh, Kennecott Copper, I think.

Q. There are a number of companies that do it?

A. Yes.

Q. It is not uncommon?

A. No.

[fol. 783] Q. What is it that governs the determination of the number of shares of stock that are to be purchased for the bonus plan?

A. The Bonus and Salary Committee must determine in accordance with the provision of the plan, what portion shall be in cash or in stock, or partly in stock and partly in cash.

Q. And is that determination all made on the basis of how many dollars will be spent for stock?

A. I am not sure I understand your question. Repeat it, please.

Q. Well, if the Bonus and Salary Committee determines —I want to go into this—that some portion of the bonus awards will be in stock, how do they make that determination?

A. I think the biggest factor in the determination currently is the fact that it is recognized that upon receipt of this stock by the participant he has a tax obligation, so that an attempt has been made to give him cash equivalent to roughly the tax bracket he is in, and I say roughly because it is difficult to determine what an individual's bracket is because you do not know his other income.

So that if the tax law were to change, of course, it follows that we could either use a lesser or greater amount of stock.

Q. Now, I understand from your testimony that the purchases of stock for the bonus plan are spread throughout the year.

Would you explain how that is done?

A. At the outset, or just before the outset, say in December of a year—before the outset of a new year, the Bonus and Salary Committee discusses the outlook and determines what figure they would recommend to the Finance Committee to be used to acquire General Motors common stock.

This takes into account what they think the earnings are [fol. 784] going to be, how much they are going to credit, how much they are going to award, how much is going to be in stock, how much is going to be in cash, and they will then come up with a figure and say, "We will buy one million dollars worth of stock in a month." This would be recommended to the Finance Committee.

The Finance Committee would authorize the Chairman of the Finance Committee to buy such stock during that particular month.

Q. How would they be spread?

A. So far as possible, on an equal dollar basis over the business days which the New York Stock Exchange is open for business.

Q. If the New York Stock Exchange were open 20 days or 22 days you would try to buy 1/20th?

A. If it were 20 days and you had a few holidays, $50,000 a day would be our objective on a million dollar purchase.

Q. What is the reason for spreading these purchases throughout the year?

A. We feel that if we buy them across the period in which we feel that we require them, that we will possibly come up with about the average price for the year; and it happened to work out that way for many years.

We are very close to what the average daily closing market price for the stock ends up at.

Q. You don't try to speculate in the market?

A. We never attempt to speculate.

Q. Now, then, your buyer, that makes these purchases, is he given any rigid instructions as to how the purchases are to be made?

A. Well, you might say he starts out the morning by calling the broker. The broker tells him that the opening bid, is say, $45 a share, and he knows that the previous night it [fol. 785] closed at, say 44¾, and we have a rule which is never broken—we never bid more than the lower of those two figures, so in this case he would put in a bid for 44¾.

In that way—and in this case, if it were a new high, we would not be establishing a new high for the stock.

Q. The purpose is not to establish a new high by your bid, is that correct?

A. That is the purpose, yes—by our purchases.

Q. By your purchases?

A. Yes, sir.

Q. Your buying procedures then are based on the estimates of your bonus stock needs for the current year.

Now do you predict the bonus stock needs for years in the future?

A. No, we have a hard time sometimes predicting it over a month.

As it was indicated earlier, we changed our sights eight times during the one year.

Q. What makes those predictions impossible for any longer period?

What are the factors that make it so?

A. Well, since it is dependent wholly on earnings, it is based on earnings and upon the determinations of the Bonus and Salary Committee to the extent which I have enumerated before, wherein it is able to estimate the amount of the maximum credit.

Q. You can't predict what the market prices are going to be either, can you, over a period of years?

A. No, we don't speculate. I have no opinion on that.

Q. Do you predict in advance what proportion of the bonus funds available for bonuses will actually be awarded?

A. That is a determination by the Bonus and Salary Committee.

[fol. 786] Q. You can't predict it for the future with respect to that?

A. There are so many unknowns that it would be difficult to say what portion would be stock and what portion would be in cash.

G.M. Exhibit 8, I think, brings that out clearly—that the high for the period is 98 per cent in stock; the low is 20.3 in stock; and the current or the last year which we have of record would be 51 per cent in stock.

Q. Could General Motors, in your judgment, discontinue the purchasing of stock altogether and make the awards in newly issued stock under the plan?

A. The plan does not provide for the use of newly issued stock, as now approved.

Q. If it were amended, it could possibly do that; but that is subject to submission to the stockholders, and you would have to obtain, and you would have to have that approval, is that right?

A. The plan would have to be amended, yes.

Q. Are there other companies who have bonus plans who use newly issued stock, if you know?

A. Yes, there are several companies—Boeing Aircraft is one; Sylvania, and several others.

Q. Now, calling your attention to one or two matters with respect to the Stock Option Plan which the Government inquired about, what is the source of stock for that plan—reacquired or newly issued stock?

A. The plan provides that it can be either newly-issued or reacquired.

Q. Do you see any likelihood that the Board of Directors would use reacquired stock rather than newly-issued to meet this requirement?

A. I don't know what action the Board of Directors would take.

I feel quite strongly that the use of newly issued stock has definite advantages over acquired stock.

[fol. 787] Q. Would you explain those to the Court?

A. The use of newly-issued stock has these advantages: if we were to go out and buy stock at the time that the

options were granted, to cover these options, it would be necessary for us to carry the stock in our Treasury, with our funds tied up for an indefinite period; and there would be no assurance, as I have said before, that the options would ever be exercised and we would hold the stock. It wouldn't be exercised unless the stock went up and made it profitable for the individual to give up his contingent credit.

Then there are other people, as I said before, who would prefer to have the contingent credit for one reason or another.

Q. The options are not exercised unless the stock goes beyond the option price, is that correct?

A. That is right.

Another reason that I think it would be better to use newly issued stock is in the case where if we just waited until the individual exercised the option, then we would be called upon at some unknown date to purchase stock at a figure which would be considerably above, because the only time a person is going to exercise the option is when the stock has gone up, so that we would pay considerably more if we wanted the reacquired stock than we would on the newly issued, and the newly issued also provides a source of funds if we need it.

Q. Now, referring to one or two questions on the Savings and Stock Purchase program—when does the employee get back his savings under that program?

A. The savings plan is set up on a class-year basis; in other words, the class that was put in effect October 1, 1955, [fol. 788] was closed at the end of the year 1955. The settlement on that class will be five years hence, or early in 1961; and at that time the individual will get the stock and Government bonds and cash.

Q. Stock, Government bonds and cash?

A. Yes. And some of them may elect to go on—a very small number—some of them may have elected to go in what we call a retirement thrift plan, which means he can keep his money in until he retires.

Q. When did this Savings and Stock Purchase Program go into effect?

A. October 1, 1955.

Q. Has General Motors ever had a similar program?

A. Yes. We had a plan in the Twenties. That was discontinued in 1932. We adopted it again several years later,

we had been without a plan like this for about twenty years; we had no stock plan of this type until 1955.

Q. Could this program be terminated and, if so, who would have the right to terminate it?

A. The Board of Directors could terminate it at any time.

Q. Do you know of any reasons that might be ascribed for abandoning the plan?

A. I think that there are several possibilities that might make us abandon it.

I referred earlier to the fact that this plan was offered to the hourly workers and that the bargaining units rejected the plan. At the moment, we do not have any salary unions.

We all know that there are white collar unions in this country, but if there were a large bargaining unit in General Motors for the salaried workers, it quite probably would be that they would not accept this plan.

Q. That might lead to a determination to abandon it, is [fol. 789] that correct?

A. That would probably be the decision for those people.

I might also say that this particular plan will not mature until early in 1961, and our objective is to see that people become partners in the success of the business by being holders of the stock; and if this objective is not accomplished, I think we would have to review carefully to see whether we had the right type of plan. If it isn't accomplished, I, for one, would not be in favor of continuing it.

Q. Now, you do use newly issued stock for this plan, is that correct?

A. That is what we are using now, yes.

Q. Are there any advantages in the use of newly issued stock and, if so, what are they?

A. The provisions we have today, going either route, give us some flexibility. It is a source of new capital and, while that wasn't the objective—the objective was to make the individual, the salaried employees, participate in the success of the business—it does offer that advantage.

Now let me see if there was any other thing there——

(Continuing) It also meets another situation that I was thinking about. While we are bringing new money in the business, we are also paying off ten million dollars worth of debentures which are payable over the next twenty odd years—ten million dollars a year, and the balance of a hun-

dred million in 1979, so it does offer a source of capital which can be used to offset that outgo. It is also very easy to administer on this basis.

Mr. Tierney: That is all.

I would like to offer General Motors Exhibits 6, 7 and 8, if they have not already been offered, which were identified by the witness.

The Court: Any objections?

[fol. 790] Mr. Owens: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked General Motors Exhibits Nos. 6, 7 and 8.)

(Whereupon a recess was taken in the trial of the above-entitled cause to 2:00 o'clock of the same day, Thursday, February 26, 1959.)

[fol. 791] Before Hon. Walter J. LaBuy, Thursday, February 26, 1959, 2:00 o'clock p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

GEORGE RUSSELL, a witness called on behalf of the government, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect examination (Continued).

By Mr. Owens:

Q. Mr. Russell, do you recall that before we adjourned for lunch one of the questions that Mr. Tierney addressed to you concerned the effect that General Motors purchases on the New York Stock Exchange for purposes of reacquiring stock to be used for the Bonus Stock Plan——

Mr. Tierney: Will you read the question, please?

(Question read.)

By Mr. Owens:

Q. I should add on the market price of General Motors. Do you understand my question?

Mr. Tierney: Just a minute. I object to that because it is not a statement of fact. I didn't go into that with the witness, the question of the market effect at all. It is not proper redirect examination. This witness is not an expert. [fol. 792] He has not been qualified as an expert, and I object to this inquiry.

Mr. Owens: I think that the record indicates what Mr. Tierney's questions were on this point. I think he very definitely did bring out the question of the uniformity of the purchases over the year and ask you with relation to the effect on the market price of the stock.

The Court: Objection overruled. He may answer.

By Mr. Owens:

Q. Now, in that connection, Mr. Russell, I want to exhibit to you a Government exhibit which has been received in evidence, and ask you if you recognize this document, sir? This is Government Exhibit No. 148, the second page of the document.

Do you recognize that document, sir?

A. Yes, sir, I do.

Q. Do you know by whom it was prepared?

A. A member of the financial staff.

Q. A member of the financial staff?

A. Yes, sir.

Q. Am I accurate in stating that this Government Exhibit No. 148, page 2, shows what percentage the shares purchased by General Motors was of the total shares traded on the New York Stock Exchange for each month during the period from 1953 through 1956?

A. That is correct.

Q. So that taking, for instance, the year 1956, for the month of January there is a figure under the column Total Shares Traded on the New York Stock Exchange, and a figure given for the shares purchased by General Motors, and then a per cent, which reflects what per cent the pur- [fol. 793] chase transactions by General Motors were of the total shares traded on the New York Stock Exchange?

A. This is exclusively New York Stock Exchange. It doesn't include the many other exchanges across the country, which would add 15 to 20 per cent total volume to those first column figures.

Q. But it shows the percentage of the GM purchase transactions as a percentage—excuse me—it shows the percentage of shares purchased by GM as the percentage of all GM shares traded on the New York Stock Exchange for each month of 1956, is that correct?

A. On the New York Stock Exchange, yes.

Q. Am I correct in observing that that ranges from a per cent in January, 1956, of 6.5 per cent through to a high of 21.3 per cent?

A. That is what is shown on the chart, yes.

Q. Now, would you tell us again what the purpose was in spreading out your purchases on the New York Stock Exchange as you described you did this morning?

A. Well, first of all, it couldn't be bought at one time, because we don't know how much stock should be purchased.

As I pointed out earlier, the recommendation to purchase stock by the Bonus and Salary Committee is reviewed from time to time in the year.

Q. In the light of your——

Mr. Tierney: I suggest, Your Honor, that the witness be permitted to finish his answers.

The Court: Do you have something to add?

The Witness: Your Honor, I was going to reply and tell him how we bought the stock. I think that is his question.

[fol. 794] The Court: Proceed.

By the Witness:

A. The Bonus and Salary Committee reviews the possible outlook, determines how much stock is to be bought, and advises the Finance Committee. The Finance Committee takes such action in giving authority to the Finance Committee chairman.

This is done on several occasions throughout the year. Last year it took eight different occasions, and for a period of time no stock was bought whatever during the year 1958.

By Mr. Owens:

Q. But at the various times that you make an estimate of the amount of stock you are going to require, as I understood your answers this morning, you made an effort to spread those out evenly so that you purchased in more or

less uniform amounts on each trading day to achieve the objective number of shares you determined you needed?

A. Within a definite period.

Q. That is correct.

A. We know we are trying to buy, say, a million dollars, and we try to buy, if there are twenty trading days, it would be $50,000 a day.

Q. May I ask you, Mr. Russell, if you are acquainted with the fact that Mr. Curtice testified before the Fulbright Committee or the Committee on Banking and Currency of the United States Senate in connection with the hearing on the factors affecting the buying and selling of equity securities?

A. I am.

Mr. Cox: May it please the Court, I object to that question unless we know what Mr. Owens' purpose is. If he is attempting to impeach the credibility of his own witness, even [fol. 795] if we assume he is entitled to do that, I think it is necessary, Your Honor, for the benefit of the witness and counsel, as the transcript now is available, for Mr. Owens to call the attention of counsel and the witness to the statement on cross examination which he is trying to impeach so we will know what this is about.

Mr. Owens: I want to state for the record that I am not undertaking to impeach Mr. Russell. I am trying to shed light on the matters concerning which he testified on cross this morning.

Mr. Cox: I don't think it is proper to read or refer to the testimony of some other person unless you are using it for one of two purposes, may it please the Court, either to impeach the witness or to refresh his recollection.

Mr. Tierney: I join in that objection, Your Honor, and would like to have counsel point out in the record where this matter was gone into that makes this proper redirect examination.

Mr. Owens: The Court has already ruled on it, Mr. Tierney.

Mr. Tierney: I have this morning's record. I can call the attention of the Court to the questions that were asked and the answers given, and it wasn't by accident that the questions were asked.

This witness is not an expert and we did not ask him his opinion with respect to market effect. He merely related what happened.

The Court: I don't recall that he testified regarding the market effect at all.

[fol. 796] Mr. Owens: He testified with respect to the purpose, as I recall, in spreading the transactions out on a more, or less uniform basis over the trading days on the New York Stock Exchange.

The Court: Yes, that is true.

I think you asked him why he adopted that practice, or someone asked him.

Mr. Owens: That is right.

Mr. Dallstream, reading from page 1319 of the transcript from this morning, asked——

Mr. Tierney: Well, Mr. Dallstream did not ask a single solitary question of this witness did he?

Mr. Owens: He made a statement here in connection with——

Mr. Tierney: He made a statement.

Mr. Owens: As to the admissibility of a document with respect to the purchasing power being in one area or another area.

Mr. Tierney: Here is what happened——

The Court: Well, I will sustain the objection.

By Mr. Owens:

Q. Is it accurate to say that the shares are spread in the purchases as nearly in a uniform basis as the Financial Policy Committee in making those purchases can do?

A. I think you have to go back to what I said this marning. It is a spread of dollars not shares.

Q. May I ask you whether or not this statement by Mr. Curtice on March 18th before the Fulbright Committee—March 18, 1955—would refresh your recollection:

"Our purchases of General Motors common stock——"

[fol. 797] Mr. Cox: Wait a minute. I object. This is a way of getting this thing in the record and they will use it in this court and the Appellate Court.

Why don't you show it to the witness?

Mr. Owens: I would be happy to.

By Mr. Owens:

Q. Will you read that (indicating)?

A. Where is the portion you would like to have me read?

Q. It is bracketed in pencil, sir. (Witness examines document.)

By the Witness:

A. I have read the bracketed portion on page 824.

By Mr. Owens:

Q. Does that refresh your recollection, sir, as to the manner in which the shares were purchased?

A. I have already described to you the manner in which the shares were purchased.

Q. Does that add anything to your recollection, sir?

Mr. Tierney: As to the manner in which they are purchased, is that your question?

Mr. Owens: As to the rate.

Mr. Tierney: I submit he has answered that question, Your Honor, as to how they were purchased.

The Court: Overruled.

By the Witness:

A. The first sentence reads:

"Because the present Bonus Plan, as approved by our Stockholders, does not provide for the use of newly-issued stock"——

[fol. 798] Mr. Tierney: The question was, "Does that refresh your recollection?"; you can answer that yes or no.

By the Witness:

A. (Continuing) I am reading it.

Mr. Tierney: Does it refresh your recollection, is the question.

I submit the witness should be required to answer it.

Mr. Bushby: First he can answer, and then he can say.

The Court: Yes, that is the question, does it refresh your recollection. Yes or no?

By the Witness:

A. This is a statement on how we purchased the stock.

By Mr. Owens:

Q. Does that statement refresh your recollection?

A. Refresh it in what respect, please?

Q. In respect to the details that are given in that statement.

A. I have read the statement, and it agrees with what I have said.

Mr. Owens: May he have this read into the record at this time? Is there any objection to that?

Mr. Tierney: Well, certainly. Of course we object to it.

Mr. Owens: He stated or he said this agrees with what he has stated.

Mr. Tierney: Well, then read the record that he has already made, and you will find out what he agrees to.

Mr. Owens: Your Honor, may we have this excerpt read into the record?

[fol. 799] The Court: Is there any objection?

Mr. Tierney: Yes, Your Honor.

The Court: Sustained.

By Mr. Owens:

Q. You stated this morning, Mr. Russell, on cross examination at the instance of questions propounded to you by Mr. Tierney that one of the advantages that you understood to accrue from using newly issued stock was that you would thereby obtain equity capital in the corporation, is that correct?

A. That is the result of issuing new stock, yes.

Q. Pardon?

A. That is a result of issuing new stock, yes.

Q. I show you Government's Exhibit No. 170, which shows the funds expended for the purchase of bonus stocks, 1947-1954. Would you state what the dollar amount of cost to General Motors is of the stock acquired for the bonus plan?

A. Government Exhibit 170 shows that for the period 1947 through 1954 the funds expended for purchase of bonus stock was a total of $182,208,866.

Q. Now, this is under the bonus stock program, is that correct?

A. (Witness nodding head.)

Q. And you stated this morning under the bonus stock program——

Mr. Tierney: Mr. Owens, there isn't any bonus stock program.

Mr. Owens: Stock bonus plan?

Mr. Tierney: "Bonus Plan."

Mr. Owens: Well, I think in many of the exhibits of General Motors or documents obtained from General Motors, it is referred to as a Stock Bonus Program. I think you are [fol. 800] being unnecessarily critical quibbling about it.

Do you have any difficulty understanding what I am talking about?

Mr. Tierney: Yes, I do.

Mr. Owens: You do. How would you choose to have it characterized, as bonus plan?

Mr. Tierney: That is your choice.

Mr. Owens: Is that satisfactory to you?

Mr. Tierney: Yes.

By Mr. Owens:

Q. Mr. Russell, you testified in respect to the funds expended for the purchase of bonus stock, that that came from treasury stock, is that correct, as distinguished from newly issued stock?

A. Bonus stock under the plan can only be reacquired stock.

Q. That, however, is not true with respect to the Savings Stock Plan or the Stock Option Plan?

A. That is correct.

Q. In both of those plans you have the flexibility to choose between acquiring Treasury stock or newly issued stock?

A. In case of the Stock Option Plan, yes, and the Salary Stock Saving Purchase Program, yes.

Q. That is a decision which the Board of Directors can make, is that correct?

A. That is a decision that can be made, yes.

Q. When you issue newly issued stock in that fashion, does that have the effect of diluting the equity of the remaining stockholders?

A. It increases the number of shares at the same time that it brings funds into the business.

[fol. 801] Q. My question was does it dilute the equity of the pre-existing stockholder?

Is there a proportionate equity? Is it decreased?

A. It could very well increase their equity.

Q. No. At the time the stock is issued, sir; not after a period of time, after the funds——

A. The stock is sold at a figure generally above the book value, so it actually increases their book value.

Q. But it doesn't increase their market value, does it?

A. It increases their book value.

Q. I am asking you, does it increase the market value?

A. No.

I am not a market expert; I don't know, if that is what your question is directed to.

Q. Well, when stock is issued under the Savings Stock Plan or under the Stock Option Plan, when there is newly issued stock, into what account are the proceeds of that stock carried?

A. First of all, there has been no stock issued under the Stock Option Plan so that we should deal with the other plan. There has been, since October, 1955, the Stock Savings Plan, and we increase the outstanding capital stock and receive cash in a similar amount.

That is, we increase the par value and increase the surplus.

Q. Under the method of keeping the accounting records of the General Motors Corporation, that becomes available as working capital, does it not?

A. It becomes available for use in the business, yes.

Q. In the same way as if new equity were obtained from a public offering, it is exactly the same.

Now in respect to purchases on the New York Stock Ex-

[fol. 802] change, again, for the minute, could you tell us how they are carried to the Treasury Account in terms of the cost?

A. Cost, plus commissions.

Q. Cost, plus commissions?

A. Yes, our complete cash layout.

Mr. Owens: I ask the Reporter to mark for identification Government's Exhibit No. 178, which is a document obtained or rather produced at the taking of the deposition of Mr. Russell on January 8, 1959.

(Thereupon said document was marked Government Exhibit 178, for identification.)

By Mr. Owens:

Q. Now will you look at the second paragraph of that document, sir?

Would you read the first sentence?

A. This is a report dated December 30th. The second paragraph, first sentence, reads:

> "Through December 30th, 1957, a total of 1,024,711 shares of common stock has been acquired at a total cost, including commissions, of $42,071,580.00 or $41.06 per share."

Q. Turning to page 3 of that document, sir, can you tell me what the difference is between the price with commission and without commission?

A. The cost, including commissions, is $41.06. The figures shown in the last two columns of this schedule indicate that the average market price—which you are now inquiring about, I believe——

Q. There is a difference between with commissions and without commissions?

A. That is right, but it doesn't show up in that schedule; it shows up right here (indicating).

The figure may be derived from—well, it isn't shown here.

[fol. 803] Q. What do you derive it from?

A. To be the difference between $41.05 and $40.69, or 36 cents.

Q. That is, commission per share of stock?

A. Per share.

Q. That is a part of the cost to General Motors, is that correct?

A. That is correct, that is part of the cost of the stock to General Motors.

Q. And I note from this document that in 1957 the total of 1,024,711 shares of common stock were acquired, and at the average commission figure of 36 cents a share, that

would be, as I calculate it, some $368,895.00, approximately $369,000.00 increased cost of acquisition of that stock for the Bonus Plan, as a consequence of it having been purchased in the open market, is that correct?

A. All of which is part of the Bonus Fund, and it doesn't affect General Motors; it just gives a fewer number of shares available.

Q. If that could be purchased off the market without commission at the market price, a saving of approximately $369,000 could be effected on commissions alone, is that not correct?

A. I know of no such offer of a million shares at no commission.

Q. But I say, if it were possible to purchase that many shares off the market, at the market price, a saving of that magnitude would result, is that not correct?

A. I can only say this: That the commission was 36 cents a share on this transaction; and those were a series of transactions, and you are asking me to tell you something on a hypothetical basis.

Q. You don't have any trouble understanding the facts I put to you on a hypothetical basis, do you?

A. No. You are saying, "if."

[fol. 804] Q. I say, if you indulge my assumptions, don't you agree that my conclusion is correct that a saving of approximately $369,000 could have occurred as a result of purchasing it off the market without commissions at the market price?

Mr. Cox: May it please the Court, if it will assist in getting this point resolved, I will stipulate that if the fund did not pay any commission, it would not pay any commission.

Mr. Owens: I think I am entitled to have my answer from the witness, Mr. Cox, and not have you testify.

Mr. Cox: I am willing to stipulate to that fact.

Mr. Owens: Well, this witness is an officer of one of the defendants in this action, and perhaps it would move things along if he had been more willing to answer,

Mr. Tierney: I object to that statement as another inaccuracy.

The Court: The witness may answer.

By the Witness:

A. If the stock could be purchased on that basis, there would be a difference in the price of 36 cents per share.

Mr. Owens: I have no further questions, Your Honor.

The Court: Are there any other questions of this witness?

Mr. Tierney: No questions.

The Court: You are excused.

(Witness excused.)

[fol. 805] Mr. Andrews: Your Honor, I would like to offer in evidence an exhibit marked Government's Exhibit No. 177, and for the aid of the parties, the top of the exhibit is entitled, "Table 10."

I believe I have a stipulation from General Motors on this, as to the accuracy of these figures.

I offer this into evidence.

Mr. Burnham: The stipulation was as to accuracy and not as to relevancy.

Mr. Andrews: I said, "accuracy," Mr. Burnham.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 177.)

Mr. Ludlow: Your Honor, the Government at this time wishes to offer evidence in the trade relation area.

I have provided you with a copy of the documents, Your Honor.

The Court: Are they contained in this volume?

Mr. Ludlow: Yes.

And it is turned to the appropriate page, I believe.

Mr. Burnham: Excuse me. May we know which documents you are referring to?

Mr. Ludlow: Yes. The first document, Your Honor, is the answer to interrogatories propounded to E. I. du Pont de Nemours and Company.

I ask that the reporter identify this document as Government's Exhibit 179.

[fol. 806] (Thereupon said document was marked Government Exhibit 179 for identification.)

Mr. Cox: May it please the Court, there is a general matter that I should like to raise about this line of proof. If Mr. Ludlow doesn't mind, it might be better to do it now before we get into the middle of the proof.

My purpose at the moment, may it please the Court, is not to object to any of these documents, although I may wish to object to their offer, but to raise what seems to me a somewhat more fundamental question.

My purpose is to suggest to the Court that counsel for the defendants, and I think the Court itself, are now entitled to a more detailed and fuller statement of the relevancy of this line of proof than we have ever had so far in this case from Mr. Reycraft or from other Government counsel.

The Court will recall that there were discovery proceedings that related to this line of proof, and that the du Pont Company did not object to the course of those discovery proceedings, but I think generally speaking produced everything that the Government wanted.

The documents that the Government now proposes to offer are documents that we produced or, perhaps, depositions that were taken in the course of the discovery proceedings.

My examination of the documents discloses that they do not relate to paint or automotive fabrics, the two commodities which were dealt with in the opinion of the Supreme Court, but deal with a variety of other commodities, largely synthetic fibers of one kind or another, and plastics.

[fol. 807] Now, I say that I think counsel are entitled to an explanation of their relevance for these reasons:

In the first place, I can hardly determine intelligently whether to object to the admission of these documents unless I really have a better idea of what they are being offered for than I have at the moment.

The second reason is that the purpose for which they are being offered will have a very substantial effect on the nature of the proof that defendants will put in because, if they are offered for one purpose, our proof may take one direction. If they are offered for another, it may take a different direction.

I have tried, on the basis of the briefs and the statement of counsel, to determine for myself with some precision what the purpose of this offer is, and I have been unable to do so.

There are two or three possibilities that occur to me, and I submit again, we ought to have them clarified in some way.

One possibility is that counsel for the Government intend to present to this Court what might be called a new and additional monopoly charge; that is to say, they may be contending that the stock interest of du Pont in General Motors not only threatens a monopoly or restraint of trade in respect to automotive paint and fabrics, which are the two commodities the Supreme Court dealt with, but that they threaten a monopoly with respect to plastics and synthetic fibers which are materials that are covered largely by these papers.

Now if that is the Government's theory, of course, I shall object to their being allowed to do that in this case. That seems to me to be a brand new lawsuit, not one that really [fol. 808] was tried here before. Certainly not one that the Supreme Court passed on.

If Your Honor should overrule that objection, which I would hope the Court would not do, but if you should, then we are faced with a very difficult problem of proof, because these commodities that they are talking about raise problems that we haven't had in this case before.

In the case of synthetic fibers, for example, and their use in the automotive industry, the fiber as such is not used. What is used is sometimes a fabric composed entirely of the synthetic materials; sometimes a fabric that is made by combining synthetic material with something else.

du Pont does not make those fabrics. In this sense, the synthetic fiber is quite different from the automotive fabric field.

du Pont makes a thread, sort of basic raw material. It is then sold to other persons, and sometimes goes through as many as six or seven processes before it emerges as a kind of fabric which is used in the automotive industry.

So that a great many of these documents have to do with a commodity which is sold to persons, processors, who take it through various stages, and then sell it to the automotive companies.

The papers show, as you might expect, the du Pont Company worked with automobile companies to try to get them to use the ultimate product. But the relations between them are not the direct relations of buyer and seller.

I have made this point as a preliminary to pointing out to the Court that if this is Mr. Reycraft's purpose, we have a problem, first, of deciding whether synthetic fibers [fol. 809] —or, let me put it this way—whether the automotive market that uses synthetic fibers can be a separate market within the sense that the Supreme Court held in its opinion that the automotive industry is a market for the paints and fabrics sold to them directly.

That may involve, if we have to go into it, a long and laborious examination of just what the characteristics of synthetic thread are that du Pont makes; whether that thread it makes is peculiar when it gets into the automotive industry, or whether the thread that goes into the automotive industry is just like all other thread.

Then, I suppose, there will have to be proof, if Mr. Reycraft pursues this, some proof as to du Pont's position, not merely in the automotive end of this industry, but in the industry as a whole, unless, of course, he can satisfy the Court that the thread which goes into the fabric that is used in the automotive industry is in some way different and peculiar from thread that goes into other products.

So that is a very wide area, a separate lawsuit; a gigantic lawsuit in itself. I hope we don't have to go into it, but I earnestly say to Your Honor, I think I am entitled to know from Government counsel whether that is their purpose. If that is their purpose, I will then have to decide what to do about it.

Now, there may be other things that they have in mind. At times, Mr. Reycraft has suggested that they are not really trying to pursue this monopoly charge, but they think that this evidence has some bearing on the question of whether the plan or decree approved by this Court should do more than divest the voting rights; that it has some bearing on whether the question of a retention of a bare beneficial [fol. 810] interest would in some way affect commercial relations.

Well, that point, may it please the Court, rather puzzles me, and I think I am entitled to have that explained because there, again, the explanation may affect my proof.

I had supposed that when the Supreme Court found that the ownership of this stock interest violated Section 7 of the Clayton Act because of its probable effect on the market for automotive fabrics and automotive finishes, that the question of what relief should be granted was a question that would have to be determined in relation to that finding.

I didn't suppose, as I said once before to Your Honor, that I could whittle away the Supreme Court's opinion by coming in here and saying, "Let me prove to this Court something about plastics."

Also I didn't suppose that the Government could expand the Supreme Court's decision by bringing in material about other commodities any more than I could limit them.

If that theory is involved, I think we should have that made clear to us.

There has also been a suggestion that this evidence is not offered to show that General Motors would favor du Pont in its commercial relations, but that if this bare beneficial interest remains, the real danger is that then du Pont will favor General Motors. It will give General Motors advantages in terms of inventions and products that it doesn't give to anyone else.

Now, that seems to be a very strange charge, if that is the purpose, because that charge was abandoned by the Government during the trial on the merits.

But, again, I point out to the Court, if that is the theory [fol. 811] of the Government, that makes a difference in the proof that I will present. It might make a difference in what kind of relief we are willing to accept by way of accommodation to the Government.

But I would object, of course, to the Government pursuing any such theory. The point that I emphasize now is that it seems to me we ought to have some exploration of the real purpose and intent of this evidence, both as the basis for considering any objections which may be made, and as a basis for the defendants' preparation of their own proof.

I have a feeling that it might be possible that this is an area of the case where we can save some time by cutting down the proof, but I don't see how we can do it while the matter rests in the confusion in which it is presently enveloped.

I hope that Government counsel will respond to my overture and give us some statement, and that I will then have

an opportunity to comment on it again, because I believe that if we can ventilate this problem, it will be of assistance to the Court and also to counsel.

Mr. Ludlow: Your Honor, although these matters have been discussed before in pretrial stages, we anticipated the argument.

Of course, at the very basis of the offering of this trade relation evidence is the very basic fact that any decree which this court may consider to alleviate this illegality must, of necessity, take into consideration all these products that bind the two companies, that bind the industries.

Mr. Cox, in his opening statement at the beginning of this trial frequently referred to the necessity of a showing by [fol. 812] the Government of why a divesting decree must be ordered; alluding of course, to the fact that there may be consequences of divestiture.

The Government continues to introduce evidence demonstrating that the dangers of such decree are non-existent or overdrawn by the defendants.

The breadth of the product inter-relationship between the automotive and chemical industries, and specifically between General Motors and du Pont as leaders of these respective industries gives clear, practical indication of the necessity of a complete divestiture.

Now, as matters would stand under the du Pont decree, the du Pont Company would continue to have a great interest in the profits of the General Motors Company; its dividends from stock, which it would hold, would be dependent upon the success of General Motors in realizing profits.

It would then be expected that du Pont would be prone to favor General Motors in supplying it rather than automotive manufacturers in competition with General Motors.

If this Court should find that the Clayton Act is not mandatory in requiring divestiture, then this evidence which I am attempting now to introduce relating to trade relations is most relevant because it demonstrates the practical necessity as distinguished from a legal necessity for the independent operations of these two great companies.

Now, let me start in by outlining in a general way what this evidence will be and for what purpose it is offered. I think that may assist Mr. Cox.

[fol. 813] To begin with, the Supreme Court itself cited in its opinion the total purchase figures of General Motors

from du Pont. This figure was, as I recall, roughly twenty-six million.

Now, this figure should be made current at this stage.

An interrogatory was directed to du Pont for this purpose, and I am attempting now to have it received into evidence. To the extent that adequate coverage of particular product areas exist as a part of the original record, the Government will not dwell on these areas at all except to demonstrate that in these areas, which were covered in the original trial, mostly by the defendants, there are products currently manufactured by du Pont and sold to General Motors.

Now the one exception to this rule or this approach is in the field of plastics as a part of the overall chemical industry.

Now, this area was only superficially treated in the original case. The Government plans to introduce depositions and writings of du Pont technical people, the latter documents found in the du Pont files, to demonstrate what this segment of the chemical industry is.

Now, these documents fairly well cover the field of plastic applications, and the introduction of the documents will alleviate any necessity for taking the Court's time to hear witnesses.

Finally, the Government will introduce certain trade reports, weekly reports and monthly reports, also from the du Pont files, which bear on the indirect market of General Motors for du Pont products.

These documents as a whole demonstrate that in addition [fol. 814] to the 50 to 70 million dollars of current direct du Pont sales of General Motors, the du Pont Company greatly influences the selection of materials and the selection of the fabricators who eventually will sell to General Motors.

In effect these reports as a whole indicate that du Pont in practice "sells" to General Motors, and it is only later that the independent parts fabricator is sold.

Now, these few documents constitute the extent of the Government's offer in this area. We have no purpose to extend the trial, but we do feel the obligation to call to the Court's attention these various areas which are not fully treated.

Now, specifically as to Counsel's argument, the Government obviously is not attempting to establish a new monopoly charge. The evidence is being offered for the purpose of

reminding the Court of this broad area that must have its effect upon the decision of what decree will be handed down.

Now, as to Mr. Cox' comment that most du Pont products go through various hands, this, of course, is very true; but, as I said, we intend to offer trade reports and weekly and monthly summary reports which indicate the du Pont Company has considerable influence upon the selection of du Pont materials and also the fabricators that handle those materials as they go through the chain to General Motors Corporation.

Now, most of the documents in that category are devoted to plastics, but that is not completely true. For instance, there are documents in this section that indicate that du Pont is very active in the promotion of nylon tires, and certainly it does not sell nylon tires directly.

Mr. Cox stated that one possibility might be that du Pont [fol. 815] would favor General Motors. Well, this, of course, is the danger with this tremendous financial interest in the General Motors Corporation.

Du Pont, looking to General Motors for profits from this stock, would certainly tend to favor the General Motors Corporation rather than its competitors.

Now, Mr. Cox referred on several occasions to synthetic fibers. I am a little confused as to exactly what he was referring to there. I assume that he means upholstery fibers.

The Government is not entering into the field of fabrics and finishes except to a very limited degree, since that was handled at the original trial.

So, as I said, what we are going to do is enter more into the plastics area, and that certainly does not include synthetic fibers, as I understand the term.

Mr. Cox: May it please the Court, Mr. Ludlow has been of some help to me and I am indebted to him for that, because as I understand it, he made it clear that at least one purpose of this evidence is to prove, I assume, from what he says, that du Pont has or may favor General Motors in some way, as opposed to, I assume, General Motors' competitors.

I also understand him to say, and I hope—I think if there is any confusion about this, all I ask is clarity, I am not trying to get the Government to take one position or another, I just want to know—but I take it from what Mr. Ludlow says that they are not contending or offering this

evidence to prove that there is any separate or additional [fol. 816] new violations of Section 7 in relation to additional products, that we are still here on the basis of an adjudication that relates only to fabrics and finishes.

Now, that is what I understand Mr. Ludlow to say, and if that is right, why, that much is out of the way. However, at this point, I fear, Mr. Ludlow began to drop me back into some of the confusion I was in because he says that this was offered to show that du Pont may have some influence over General Motors with respect to these other products.

Now, that puzzles me because unless they are really going to make the new monopoly charge, what difference does that make?

They have got a charge, a substantive charge established under Section 7 as to fabrics and finishes, and surely they cannot improve that by proving some vague charge that falls short of a violation of the statute in respect to these other commodities.

I can understand the argument that du Pont may favor General Motors, and I can deal with that, and that is all right. They are not going to argue that these products, there is any separate monopoly or threat of monopoly, or possibility of monopoly as to these other products. I understand that.

However, I do not understand, if that is so, what the purpose of this testimony is.

Now, as far as the volume of sales is concerned, and as far as proving that du Pont makes plastics and makes synthetic fibers—

By the way, nylon is a synthetic fiber and that is what I [fol. 817] am talking about. All these things like nylon are made out of coal and air and water, and are taken off and woven ultimately into cloth. Those are synthetic fibers.

If the purpose is to prove that du Pont makes those things and sells them to other people or sells them, in the case to some degree with the plastics, directly to General Motors, there is no problem about that.

We have answered interrogatories and we have answered notices to admit, we have given the Government up-to-date figures on sales, and I do not intend to object to that material.

However, the problem, it seems to me, is raised by these documents which, as usual, are fragmentary, incomplete,

and do not really reflect the transactions which are reported in them.

Your Honor will remember at the trial on the merits sometimes one document would tell part of a story and it took a long time to tell the rest of it.

Now the question I raise—and I think it is one that the Government has seriously considered—is why, with a finding here by the Supreme Court, do we have to go into all of this? What does it add to the figures on sales, to the admitted fact that du Pont makes these things, this material? How can that possibly assist the Court in determining whether there is anything in this argument about du Pont favoring General Motors?

If that is a good argument, it must rest just on the fact that we make these things and that we sell them; and I suppose it is an argument that if there is anything in it, the Government will try to support it, but I don't see how they can from the record of the trial on the merits.

[fol. 818] The problem here is not the problem that I fear any of these documents; there is nothing in them to be afraid of, but they are going to extend this trial, in my judgment, unless the defendants, as a group, and I, as Counsel for one of the defendants, decide that we will run the risk of just letting the Government shovel them in and not doing anything about it. And that is a great risk for us to run.

I am not prepared to say this afternoon what course I will take but I suppose the course of prudence is to really try these things to the hilt and tell the story about every one of these transactions, which are innocuous transactions; and, as I said, Your Honor, in many cases it is true, invariably, that nylon and things of that kind have nothing to do with direct sales of General Motors.

True, du Pont works with General Motors; but when it encourages General Motors to buy a product that has nylon in it, which General Motors buys from a third person, du Pont has no way of knowing whether the nylon in the article came from du Pont or whether it came from somebody else; and that is true of many of the synthetic fibers, and it is true of the plastics.

The difficulty with this whole line of proof, aside from the ultimate proof of the facts about sales, which I intend to raise no question about—I am not committing any other Counsel on that point, however; other Counsel may have

different views—but we answered the interrogatories, we answered the notice to admit, and that I do not intend to object to; but the difficulty with the rest of it is, I think, that it threatens to open a box, a bottomless box, in which the parties well be may be fumbling for a long time. And I really, earnestly, suggest that the Government reconsider its position and see if there is not some way that this part of the case, to the extent that they think they have to do it, [fol. 819] can't be dealt with on the basis of our admissions or on the basis of stipulations which I am willing to make, if there are any additional stipulations that the Government wants.

Mr. Tierney: If the Court please, I want to say that as far as General Motors is concerned, we thought this issue was pretty well determined.

We did not, in response to a motion to produce, produce any documents with respect to these other products, because Your Honor ruled that we did not have to. We didn't answer any of the requests for admission, because Your Honor ruled that we didn't have to.

I would like to ask Your Honor again to try to bring us back to what this case is about.

The Government has said in one of its briefs that in its opinion there are just two issues before this court under their theory, and those two issues are the time and the manner of divestiture.

They have also said in their brief, and I quote,

> "The decree would not forbid General Motors to do business with du Pont, nor would it necessarily restrict the amount of such business. General Motors would still be free, at its option, to purchase identical amounts of the products in question from du Pont."

And, Your Honor, on January 19, 1959, in the hearing on this matter, opened court by saying, "Good morning, Gentlemen"; and then announcing and quoting from that very opinion, from that very statement that is in the Government's brief.

Now we, when these documents are offered, intend to object to all of them. We think the matter has been determined; and, if this evidence has any relevancy at all, it [fols. 820-821] strikes me that it must be relevant only to

the theory that they are attempting to prove a new line of commerce.

If we get into that, as we have shown to Your Honor by affidavit, it will take us months to get our evidence ready to meet that issue.

I think Your Honor has already limited it to this, has ruled on it once, and properly so; and I think the ruling should be the same.

The Court: The Government has suggested an adjournment for 3:30, and it is almost that time now.

The Court suggests that counsel hold a conference and see if you can't agree on some program. It has been suggested here that counsel may be willing to stipulate to some of these matters, and maybe you can simplify and shorten it.

So the Court will stand adjourned until tomorrow morning at ten o'clock.

(Whereupon an adjournment was taken in the above-entitled cause until Friday, February 27, 1959, at 10:00 o'clock, a. m.)

[fol. 822]

Transcript of Testimony of February 27, 1959

COLLOQUY BETWEEN COURT AND COUNSEL

(Resumed)

The Court: Counsel may proceed.

Mr. Ludlow: May it please the Court, I regret to report that the parties in conference have been unable to agree to the stipulation in this product area, with the exception that an expeditious method of offering the Trade Report excerpts has been agreed upon should their relevancy be established.

I would like to direct a few comments to Mr. Tierney's closing statement yesterday, to which I did not then respond.

Counsel again repeated his arguments heard by this Court several times previously, that a bringing up to date of trade information would force the defense and the Court to determinations of lines of commerce and such matters.

The purpose for which these documents will be offered required no such inquiry. It was only the intention of the

Government, first, to illustrate the present total dollar sales to General Motors by du Pont.

Counsel for du Pont, as I understand, concedes its admissibility.

Secondly, to illustrate the range of the products presently manufactured by du Pont and sold to General Motors. Again I understand that Counsel for du Pont concedes its admissibility.

Third, to illustrate the degree to which du Pont is able to gain the selection of du Pont materials by the automotive manufacturer for particular parts, eventually to be manufactured by an independent supplier. Although it is impossible to compute these indirect sales in dollars which du Pont gains through a variety of direct automotive con-
[fol. 823] tacts, this unquestionably significant amount should be recognized as increasing the direct sales figure.

Let it again be clearly understood that the Government suggests no improper conduct on the part of the companies by the introduction of this evidence. The Government shows a manner of doing business, and indeed du Pont will add sections to our excerpts which cite non-General Motors contacts somewhat similar in nature.

Fourth, to illustrate the growing importance of the plastics industry to the automotive producer, concerning which there is little evidence in the record.

This Court has heretofore ruled that a limited trade relation inquiry is relevant. It is true that the Court ruled that General Motors need not divulge competitive secrets of future plans and protected General Motors from an allegedly burdensome inquiry immediately prior to the commencement of this hearing; but it is not the understanding of the Government that these pre-trial rulings in any way affected the basic decision of this Court that trade relation information is relevant.

Yesterday afternoon I stated the relevancy of these documents as well as I was able. I will not restate these propositions, except to say that the Government's position is that current product evidence, as complete as possible in nature, must be before this Court, so that a decree, just in all respects, may be determined.

A restrictive consideration of trade between these companies, which the defendants proposed in brief, and now urge, places them back in trial stage, when, in fact, we

should be considering the whole of the situation and the added competitive dangers of the whole area.

[fol. 824] Mr. Cox: May it please the Court, I think some progress was made in our conference yesterday. At least the statement that Mr. Ludlow has made this morning seems to me to clarify the situation somewhat, although it still leaves the parties at issue over the question of the basic relevance of this material.

I take it that in the statement Mr. Ludlow made this morning, he was not qualifying or withdrawing from the statement, I understand, that he made yesterday—that this evidence was not offered to prove that there is any threat of restraint of trade or of monopoly by reason of the stock relationship with respect to these new and different commodities that are covered in these documents.

Is that correct, Mr. Ludlow? That is still your position, I take it?

Mr. Ludlow: I am not sure that it is exactly as you stated.

Mr. Cox: Can you help us on that? Because, you see, that is, from my point of view, a crucial question.

As I said yesterday to the Court, if we are going to try another Section 7 case now that does not relate to automotive fabrics and finishes but does relate to plastics, synthetic fibers and to synthetic rubber, and such things as that, then I think, quite apart from the question of whether the Government should be allowed to do it, certainly on any basis we should be told, so that we will know how to conduct ourselves when we present our defense.

The Court: Will you reply to Mr. Cox on that?

[fol. 825] Mr. Ludlow: Your Honor, our position is as I attempted to state in closing this morning: We are concerned that there may be an added competitive effect due to this broad range of products.

It is certainly true, as Mr. Cox stated, that this does not constitute a charge of restraint of trade, in fact, or a monopoly, in fact.

It is simply our point that all the products that are sold or bought must be considered when the decree is considered.

Mr. Cox: The difficulty I have, Mr. Ludlow, is this. If the Government intends to argue now and hereafter that by reason of the ownership of this stock there is, in the terms of Section 7, a probability of a restraint of trade or a tendency to do so as to the commerce between these

two companies with respect to synthetic fibers and plastics, and the other commodities that are covered in these papers, then, obviously, may it please the Court, the only safe course the defendants can follow would be to meet that issue head-on and to develop all of the considerations that I referred to yesterday. This includes the very difficult question of whether there can be said to be a separate market for automotive use of these various products in the same sense in which the Supreme Court found that there was a separate market for automotive fabrics and finishes.

I had thought that it was quite clear at the end of the colloquy yesterday that this evidence was tendered by the Government not with that point ultimately in view at all. I rather get the impression from Mr. Ludlow this morning that they wish to reserve the right at some time to argue that there is or may be a probability in the terms of Section 7 of a tendency to monopoly, or of a tendency to restraint of trade in these commodities; and all Mr. Ludlow has to do is to say yes, that is their case, that is what they [fol. 826] want to do, then we can argue out whether that should be permitted. If the Court rules that it should be permitted, then we will have to decide what to do. But I do think that we should not leave it in the slightest confusion or obscurity, because there is a problem; it is hardly fair to the defendants—and, it seems to me, if I may say so without being presumptuous, hardly fair to the Court—to leave this rather very important question in the slightest doubt.

Now I think that perhaps the trouble is that the Counsel are unable to draw a clean line between this Section 7 charge and some vague use they may think that they might make of this material in relation to the Section 7 charge that has been passed on by the Supreme Court; but that is the very reason why it is important, it seems to me, to have this clarified. And, as I say again, all I want now is clarification. If I can get that, I will know what we have to do.

Mr. Reycraft: Your Honor, may we have ten minutes to confer among ourselves?

The Court: Very well, the Court stands recessed for fifteen minutes.

(A short recess was thereupon taken.)

The Court: Proceed, please.

Mr. Ludlow: Your Honor, I had thought that our position was clear on this matter. Let me make a further statement.

The acquisition of the stock is itself the illegality here. Lines of commerce, as I have stated before, are therefore irrelevant to the hearing.

Now, the purpose for which we are now here is to determine how to effectively separate the inter-corporate re- [fol. 827] lationship and to thereby guard against a resurgence of these same or similar anti-competitive acts.

The appropriateness of not limiting the decree to preventing a resumption of the same anti-competitive consequences is obvious when we consider that this is a hearing on the manner of guarding against the effects of an entire illegal stockholding.

As the International Salt case held, the Court must frame a decree which would not only bar violations on roads already traveled, but also to effectively prohibit travel along other avenues headed toward the same anti-competitive consequences.

These other roads of necessity involve those product areas presently existing and those likely to develop.

Now, I am quite sure that if the documents which we intend to offer are held to be relevant, they can be completed within several hours, two hours at the most.

If this is the argument of the defense, it has little merit.

As far as their case presentation is concerned, of course, they must present the evidence that they feel necessary to counteract ours. But that is a consideration for them, not us, and we will meet that problem when they present it.

Mr. Cox. May it please the Court, apparently there has been a complete reversal of the Government's position since yesterday afternoon.

As I now understand the Government's position, they are bringing a new Section 7 charge. If that is their position, I think we will have to contend to Your Honor that they should not be permitted to do that in this case.

I should like to point out to Your Honor that the curious thing about this is that the plan presented by the du Pont [fol. 828] Company does not by its terms attempt to cut out any of these commodities and say that du Pont used its stock to influence the trade in plastics or anything of that kind.

The plan we propose is a plan that operates generally on the stock, so that we are not here in a position where we say or we are asking this Court to enter a judgment that relates only to fabrics and finishes.

If we were in that position, why, perhaps there would be more excuse for the Government to come in and say: Now we want to amend our original complaint and bring a new Section 7 case and show the Court that du Pont should be enjoined or the judgment in some way should read not only on fabrics and finishes, but also on plastics and synthetic rubber and synthetic fibers.

As a practical matter that is not before the Court. I can't understand on what ground the Government believes that it is entitled now to try this new charge.

I was really startled when Mr. Ludlow said so far as violation of Section 7 is concerned, the question of a line of commerce is irrelevant because that is just exactly opposite of what the Supreme Court held.

They can't make out a Section 7 case with respect to plastics and synthetic fibers and these other commodities without trying the issue of a line of commerce. The Supreme Court had to meet that issue and did deal with it in the opinion in this case on fabrics and finishes.

I earnestly submit to Your Honor, as the result of this rather painful process we have gone through since yesterday evening, that the cat is now out of the cellophane bag, and we know exactly what it is the Government is trying to do.

[fol. 829] They want to be in a position in this case to argue, either here or elsewhere, that there is a tendency to monopoly or to restraint of trade in these other commodities which are covered by this rather large number of documents that they want to put in.

I hoped that these restrictions, which seem to me to be promising, that they had adopted yesterday afternoon, would enable the Court to rule on this problem on a somewhat narrower basis, but apparently we are now faced with this problem.

In the interest of brevity, we had agreed, counsel for defendants, among themselves, had agreed that if this problem arose, the argument on the propriety and relevance of enlarging this law suit, ballooning it out, so that it becomes like three cellophane cases, was a problem that would be

dealt with principally by Mr. Tierney. So, I am not going to argue the point in detail, except to say to Your Honor that it seems to me at this point we face the greatest problem that we have so far in this hearing, because the Government in effect has said to us, yes, that is what we are going to do. Now you go ahead and do whatever you have to do to meet the charge.

If that is the situation, we will have to discharge our duty in the best way we can. But I earnestly submit to the Court that the Government should not be permitted to do this. We think the evidence should not be admitted at all.

[fol. 830] What I am trying to say to the Court now is that it now appears that we have more here than simply the question of the relevance of a certain group of documents which are offered on some basis. We are now presented, somewhat to my surprise after yesterday afternoon, with a new additional Section 7 charge that relates to these odd commodities.

Mr. Tierney: If it please the Court, inasmuch as I have argued this to Your Honor at least twice before, I am not going to take a lot of time.

My suspicions have been confirmed. We objected to the production of these documents because we had a feeling that the Government wanted to expand this case beyond the issues as defined by the Supreme Court. We objected, and therefore we were not required by Your Honor's ruling to produce any of these documents.

I think it is about time that the Government got down to the point as to what is going to happen to 63 million shares of General Motors stock that du Pont owns.

The Supreme Court determined that this amount of stock had been used in such a way that it then appeared that there was a likelihood of developing a monopoly in finishes and fabrics.

The Court said that in order to find a violation of the Clayton Act Section 7, we must first determine the line of commerce.

They did that. In their opinion they say:

> "Determination of the relevant market is a necessary [fol. 831] predicate to finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition within

the area of effective competition. Substantiality can be determined only in the terms of the market effect. The record shows that the automotive finishes and fabrics have such peculiar characteristics and uses to constitute them products sufficiently distinct from all other finishes and fabrics to make them a line of commerce within the meaning of the Clayton Act." Citing a case. Now, this is the important part of it:

"Thus the bounds of the relevant market for the purpose of this case"—that is, the case that is before Your Honor—"are not coextensive with the total market for finishes and fabrics, but are co-extensive with the market of the automotive industry, the relevant market for finishes and fabrics."

Now, they have already made a determination. The Supreme Court has found that du Pont has a sufficient percentage of General Motors business for finishes and fabrics that it is likely to develop into a monopoly.

You start hearing this case with the assumption that that is continuing. There is no evidence that it is not. That is in the record.

Now, the case has been sent back to Your Honor for relief. The Court spelled out in its opinion that the influence of this stock made this possible. The influence of the ownership of this stock on the purchases of General Motors made it possible, and they sent the case back to Your Honor to determine in what manner to rid du Pont of that influence. That is the only thing.

[fol. 832] This evidence, and it is now available according to the statement from Mr. Ludlow, this evidence could have no relation to anything other than an attempt to prove another Section 7 case.

Now, if we have to go through a Section 7 case, Your Honor—we thought that had been put to rest—but if we have to go through another Section 7 case, we would be here forever, and I am not going to prolong it.

The Court: The Court rules that this would be irrelevant, and the objections are sustained.

Mr. Ludlow: Your Honor, may I inquire, does that apply to the interrogatories also, the entire body of the evidence?

The Court: I would say so, yes, anything that relates to the evidence that you are offering at this time.

Mr. Ludlow: Your Honor, may I have these identified for the record?

The Court: Yes, you may.

Mr. Ludlow: The documents?

The Court: Yes.

OFFERS IN EVIDENCE

Mr. Ludlow: Your Honor, in preparation for offering the documents this morning, the documents have all been pre-numbered, pre-stamped as identified and the number applied.

Now, with Your Honor's permission I will refer to those numbers as identification numbers alone.

The Court: Is there any objection to that procedure?

Mr. Cowen: Your Honor, I think there is one thing that should not be excluded, and that is the total dollar sales between du Pont and General Motors. I think that should [fol. 833] be admitted and I think that is in the interrogatories. I believe that is admissible and that should not be excluded.

The Court: Oh, yes.

Mr. Cowen: The total dollar sales between General Motors and du Pont.

The Court: Since the final hearing, the case in chief?

Mr. Cowan: Since the final hearing, yes.

The Court: I would say that is relevant and that that should be admitted.

Mr. Tierney: Of course, that gets us into this other phase.

The Court: It is only that part of the interrogatories that has to do with this new issue we have been talking about.

Mr. Tierney: I have one suggestion, if I may make it, Your Honor.

I think if all of these exhibits could be offered at adjournment, we could get on with some witnesses. Perhaps they could do it outside of the court.

Mr. Ludlow: Your Honor, we are prepared now to identify for the record the documents. We would like to do that.

Mr. Tierney: Do we have to do that in open court?

Mr. Ludlow: The answers to interrogatories propounded to E. I. du Pont de Nemours and Company has been previ-

ously identified as Government's Exhibit for identification, 179.

[fol. 834] Reading from this answer:

"Q. 1: The total dollar sales of E. I. du Pont de Nemours and Company to General Motors Corporation, exclusive of sales by certain du Pont subsidiaries, substantially all of whose sales are made outside of the United States, for the years 1955, 1956 and 1957, and for the period January 1st, 1958 through September 30th, 1958 are:

1955: $69,594,993.
1956: $54,889,839.
1957: $52,803,772.

For the period January 1st to September 30, 1958:

$26,482,121."

Now, do I understand that——

The Court: That is admitted.

Mr. Ludlow: That is admitted?

The Court: Yes.

(Said document, so offered and received in evidence was marked Government Exhibit 179.)

Mr. Ludlow: A second question was asked on that interrogatory, Your Honor, dealing with sales of du Pont to other automotive companies. I would offer that section also.

The Court: Any objection to that?

Mr. Tierney: Yes, Your Honor.

The Court: Other automobile companies?

Mr. Tierney: Yes, sir, we object to that, Your Honor.

[fol. 835] The Court: What would be the materiality of that, Counsel?

Mr. Ludlow: Well, Your Honor, the question 2, lists a series of automotive companies to whom du Pont made sales, and the relationship between these companies and du Pont, on the one hand, and the relationship between du Pont and General Motors on the other hand, and the percentage of the market, the per cent of du Pont automotive business that goes to General Motors, which runs about 88 per cent, is relevant in that it shows the relationship between the two companies and bears upon the decree.

Mr. Tierney: Well, we get right back to this question of percentages of markets again, Your Honor. What is the market we are talking about?

Mr. Ludlow: Well, Your Honor understands, of course, that the dollar value quoted in the first question are total product figures, so that argument is not sound.

The Court: I think this should be received, so the objection is overruled.

Mr. Ludlow: Question 2 of the Answers to Interrogatories propounded to du Pont:

> "The total dollar sales of E. I. du Pont de Nemours and Company to each other automobile manufacturing company, exclusive of sales by certain du Pont subsidiaries, substantially all of whose sales are made outside of the United States, for the years 1955, 1956 and 1957, and for the period January 1st, 1958, through September 30th, 1958, are——".

There is a list of companies which I will not read, the complete list, but I would select the Ford Motor Company.

"1955: $5,261,339.00.

[fol. 836] "1956: $4,654,547.00.

"1957: $5,076,091.00.

"To date, September 30th, 1958: $2,002,354.00."

I would select Chrysler Corporation:

"$951,122 in 1955.

"1956: $677,114.

"1957: $830,548.

"To date, September 30th, 1958: $441,864."

Mr. Tierney: If the Court please, if I understand the record now, these interrogatories and the answers have been admitted, is that the record? Is that what you understand it to be, Mr. Cox?

Mr. Cox: I understand that the entire interrogatory and the entire answer were admitted.

Mr. Ludlow: That is right.

Mr. Tierney: In view of what counsel just read, I move that all reference in these answers to sales of an unde-

scribed, unlimited commerce to other corporations be stricken from this record.

Mr. Ludlow: Well, Your Honor ruled——

Mr. Tierney: Just a moment, please, if you will. I am sorry. We are interested in what is going to happen to 63,000,000 shares of stock.

Now, what difference does it make what du Pont sells to Ford, or to Chrysler or to anybody?

I think it is obvious that part of it should be stricken, at least.

The Court: Overruled.

[fol. 837] Mr. Ludlow: There are two additional questions as a part of this interrogatory, which I will not deal with, but I understand that they are admitted.

They are on the third question which indicates the federal tax paid with respect to dividends received by du Pont and bear on other aspects of the case.

The fourth question deals with the position of the Wilmington Trust Company, which also bears on other aspects of the case. I understand the interrogatory as a body has been received.

The Court: Yes.

Mr. Ludlow: Government Exhibit for identification 180, previously identified and stamped, is the request for admissions of fact directed to du Pont, which I will not read.

Mr. Cox: You are offering that, aren't you?

Mr. Ludlow: I understand that this was the only document accepted (indicating).

Mr. Burnham: We understand, Your Honor, that from here on, the Court has ruled, these are not to be admitted.

Mr. Ludlow: Your Honor, considering the fact that du Pont apparently is perfectly willing to accept documents such as their answers to requests for admissions of fact, I request that you rule on these particular documents separately.

Now, the great body of them you have excluded by your ruling certainly.

Mr. Reycraft: They may present different problems and we would like to have you rule on them one by one.

The Court: Well, I am not familiar with the exhibits you have.

[fol. 838] Mr. Ludlow: Well, Your Honor, they are in your book.

The Court: What numbers are they?

Mr. Ludlow: The first document is the interrogatory, the answer to the interrogatory, stamped 179.

The Court: That is the first one in the book?

Do counsel for the defense wish to be heard on this? Is it objected to?

Mr. Tierney: Yes, Your Honor.

The Court: You are now speaking of request for admissions?

Mr. Ludlow: Request for admissions of fact directed to du Pont.

Mr. Tierney: I object to that, Your Honor. If you will look at the second page of it——

The Court: Is this what I ruled on?

Mr. Tierney: Yes.

The Court: Sustain the objection.

Mr. Ludlow: Your Honor, I didn't understand that you ruled on this.

The Court: This is a part of my ruling.

Mr. Reycraft: These requests have been answered, Your Honor.

Mr. Cox: Your Honor, I am in a somewhat awkward position and perhaps not in a position to assert the objection which Mr. Tierney is in a position to assert, because although I am not sure, in view of what has happened, I am bound by what I did say yesterday afternoon.

I did say yesterday afternoon that I was prepared to put [fol. 839] this document and the answer into the record. I made that statement when I hoped that we could work out some accommodation; but I am not inclined to withdraw them now.

Mr. Reycraft: To the extent that we have misunderstood each other, I certainly will not hold Mr. Cox to any statements that he made before.

Mr. Cox: I said that, and I will stand by it.

I am not objecting, if the Court please.

Mr. Tierney: Well, we do, Your Honor. Mr. Cox is very gracious, but if he had to do it over again and if he knew what they were going to say this morning, I am sure that he would object, because it comes within the category—leads into another trial of another line of commerce.

We object to it.

The Court: I think the objection should be sustained.

Mr. Ludlow: The Government has previously identified for identification Exhibit 181, which is the response of the E. I. du Pont de Nemours and Company to the request for admissions of fact.

Mr. Tierney: We object to it.

The Court: Sustained.

Mr. Ludlow: The Government offers a chart prepared, tabulating the questions and answers from the previous two documents.

It has previously been identified as Government's Exhibit 182.

Mr. Tierney: Same objection.

[fol. 840] The Court: Sustained.

Mr. Ludlow: The Government previously has marked for identification the document containing the transcript of the deposition of William C. Wall, an employee of the du Pont Company.

I offer the entire deposition of William C. Wall.

Mr. Tierney: Same objection, Your Honor.

The Court: Sustained.

Mr. Ludlow: The Government has previously identified this document as Government's Exhibit for identification 184, which is the deposition of Robert Henry Walsh, a du Pont employee, both Wall and Walsh depositions dealing with plastics.

Mr. Tierney: Same objection.

The Court: Sustained.

Mr. Ludlow: May I have a few moments, Your Honor?

The Court: Yes, you may.

Mr. Ludlow: The Government offers the excerpt from a letter dated October 28, 1928, from William C. Wall, Mechanical Consultant, du Pont Company, to Fred M. Roller, Roller Engineering Maintenance.

This document has been previously identified as Government's Exhibit 185.

Mr. Tierney: Same objection.

The Court: Sustained.

Mr. Ludlow: The Government has previously identified as this exhibit for identification 186 an excerpt from End-Use Weekly News, du Pont Polychemicals Department, April 19, 1957.

[fol. 841] Type documents such as this were identified at the deposition of Messrs. Wall and Walsh.

Mr. Tierney: Same objection.

The Court: Sustained.

Mr. Tierney: If the Court please, counsel has about sixty-four documents just like that; and if he is going to offer them all at once, we will be here forever.

Mr. Ludlow: Your Honor, I feel that it is a necessity here to properly identify the exhibits, because due to the manner in which the documents were procured, it was necessary to take excerpts from excerpts, as it were, and I think it is an absolute necessity to identify them by caption only, not reading the documents.

The Court: Very well. Proceed.

Mr. Tierney: If the Court please, may we have a standing objection on this?

The Court: You may.

Mr. Ludlow: Your Honor, if the parties will stipulate that all of these documents may be a part of the record, we can avoid this identification.

Mr. Tierney: Not a part of the record, hardly; but we will stipulate that you are going to offer them.

Mr. Owens: You are not willing to stipulate to that effect?

Mr. Cowen: We will stipulate that they have been offered and have been excluded by the Court.

The Court: I think that ought to be sufficient, that stipulation ought to be sufficient.

[fol. 842] They stipulate that they were all offered and excluded by the Court.

Mr. Ludlow: It won't be possible to identify the particular document unless the caption is read in each case.

Mr. Cowen: We can agree on those documents after Court, and then read them into the record.

The Court: Are they consecutive numbers?

Mr. Ludlow: Yes.

The Court: Well, that will be very simple, then. It will be just from number so-and-so to number so-and-so, offered and excluded by the Court.

Mr. Owens: If Your Honor please, in determining the nature of the ruling with respect to what has been excluded as irrelevant, I think it should be clear in the record just

exactly what the document was offered by the Government for——

Mr. Tierney: Doesn't the document speak for itself?

Mr. Ludlow: We don't want the document to speak for itself, as I understand it, Mr. Tierney.

May I continue reading the captions, Your Honor?

The Court: Proceed.

Mr. Ludlow: The Government has identified as No. 187 excerpts from End-Use Weekly News, du Pont Company Polychemicals Department, October 26, 1956.

The Court: The record may show that there is a standing objection, and the objection is sustained by the Court to the following exhibits, so we won't have to repeat this.

Mr. Ludlow: Government's Exhibit 188, excerpt from [fol. 843] Market Development Weekly News, du Pont Company Polychemicals Department, November 14, 1958.

This document or a type document was identified during the depositions of Messrs. Wall and Walsh.

Government's Exhibit 189, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, February 28, 1958, and March 7, 1958.

Government's Exhibit 190, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, October 5, 1956.

Government's Exhibit for identification 191, excerpt from Trade Report. Organic Chemicals Department, Rubber Chemicals Division, dated April 15, 1955, relating a call by C. F. Nixon, General Motors Central Research.

Government's Exhibit 192, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, January 4, 1957.

No. 193, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, February 8, 1957.

No. 194, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, May 17, 1958.

Government's Exhibit for identification 195, excerpt from a letter dated May 27, 1957, from J. W. Libby, Jr., Manager, Development Conferences, du Pont Company, to Delegates to Development Conferences relating to a conference with personnel of Delco-Remy Division, General Motors.

Government's Exhibit 196, excerpt from letter dated January 11, 1957, from M. J. Roedel, to W. C. Wall, du Pont

Company, entitled, "General Motors Visitation, Decorative and Function Plastics Committee."

[fol. 844] Government's Exhibit 197, excerpt from End-Use Weekly News, October 12, 1956.

Government's Exhibit 198, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, October 4, 1957.

Government's Exhibit 199, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, November 22, 1957.

Government's Exhibit 200, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, November 7, 1958.

Government's Exhibit 201, excerpt from Industrial Merchandising Section Monthly Report, May, 1955.

Type documents were identified during the depositions before named.

Government's Exhibit 202, excerpts from Industrial Merchandising Section Monthly Report, June, 1955.

Exhibit 204, excerpt from Industrial Merchandising Section Monthly Report, August, 1955.

Government Exhibit No. 205, excerpt from Textile Fibers Department, merchandising report, dated March 27, 1956, regarding call at the Chevrolet Division, General Motors Corporation.

Government Exhibit No. 207, excerpt from Textile Fibers Department, sales service report dated 4/21/54, regards a call at Chevrolet Division, General Motors Corporation.

Government Exhibit No. 208, excerpt from Industrial Sales Development, monthly report summary, du Pont Company, Textile Fibers Department, May, 1954.

Government Exhibit No. 209, excerpt from End-Use [fol. 845] Development Group, du Pont Company, Polychemicals Department, June 8, 1956.

Government Exhibit No. 210, excerpt from End-Use Weekly News, du Pont Company, Polychemicals Department, September 6, 1957.

Government Exhibit No. 211, excerpt from Weekly News for End-Use Development, du Pont Company, Polychemicals Department, August 30, 1957.

Government Exhibit No. 212, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, January 17, 1958, and January 24, 1958.

Government Exhibit No. 213, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, February 14, 1958.

Government Exhibit No. 214, excerpt from Trade Report, Organic Chemicals Department, Rubber Chemicals Division, dated January 27, 1955, regards call at A. C. Spark Plug Division, General Motors Corporation.

Government Exhibit No. 215, excerpts from Trade Report, Organic Chemicals Department, Elastomers Division dated February 6, 1957, regard call at Oldsmobile Division, General Motors Corporation.

Government Exhibit No. 216, excerpts from Trade Report, Organic Chemicals Department, Elastomers Division, dated January 16, 1956, regard call at Fisher Body Division, General Motors Corporation.

Government Exhibit No. 217, excerpt from Trade Report, Elastomers Chemicals Department, dated June 10, 1958, regards call at Fisher Body Division, General Motors Corporation.

Government Exhibit 219, excerpt from Market Develop-
[fol. 846] ment Weekly News, du Pont Company Polychemicals Department, November 15, 1957.

Government Exhibit No. 220, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, March 22, 1958.

Government Exhibit No. 221, excerpt from Trade Report, Organic Chemicals Department, Elastomers Division, dated November 19, 1956, regards call at Truck and Coach Division, General Motors Corporation.

Government Exhibit No. 222, excerpt from End-Use Weekly News, du Pont. Company Polychemicals Department, June 14, 1957.

Government Exhibit No. 223, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, January 11, 1957.

Government Exhibit No. 224, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, September 27, 1957.

Government Exhibit No. 225, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, December 6, 1957.

Government Exhibit No. 226, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, February 7, 1958.

Government Exhibit No. 227, excerpt from Market Development Weekly News, du Pont Company Polychemicals Department, May 31, 1958 and June 7, 1958.

Government Exhibit No. 228, excerpt from Market Department Weekly News, du Pont Company, Polychemicals Department, May 31, 1958 and June 7, 1958.

[fol. 847] Government Exhibit No. 229, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, November 7, 1958.

Government Exhibit No. 230, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, August 29, 1958 and September 5, 1958.

Government Exhibit No. 231, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, September 12, 1958.

Government Exhibit No. 232, excerpt from Market Development Weekly News, du Pont Company, Polychemicals Department, October 24, 1958.

Government Exhibit No. 233, excerpt from End-Use Weekly News, du Pont Company, Polychemicals Department, November 16, 1956.

I state for the record that as to the trade reports and monthly reports and weekly reports that I have put into the record and some that I will offer later, du Pont has added additions to that and the Government excerpt is blocked off to indicate that that is the Government's original excerpt.

Mr. Gribbon: May I ask, Mr. Ludlow, the exhibit that you have offered does include the portion of the excerpt which the du Pont people have added?

Mr. Ludlow: That is correct. For clarification on the indication of the Government's Section, by blocked off, I mean completely enclosed with a line. Additions not enclosed and blocked are the du Pont additions.

Government Exhibit No. 234 is entitled, "Industrial Sales Development, Program No. 11 Reinforced Plastics, W. E. Hansen, dated September 8, 1954.

[fol. 848] Government Exhibit No. 235, a paper of the Polychemicals Department, Research Division, entitled "The Value of 'Delrin' in Specific Applications."

Government Exhibit No. 236, a paper written by William C. Wall, Mechanical Consultant for the du Pont Company, entitled, "The Influence of Plastics on the Automotive Industry."

I might mention that this paper was delivered and also published in symposium form.

Government Exhibit No. 237 entitled, "Weekly Notes, Reinforced Plastics," dated March 27, 1957.

Government Exhibit No. 239, excerpt from End-Use Weekly News, du Pont Company Polychemicals Department, November 24, 1956.

Government Exhibit No. 240, excerpt from Industrial Merchandising Section, Monthly Report, January, 1956.

Government Exhibit No. 241, excerpts from Industrial Merchandising Section, Monthly Report, March, 1956.

Government Exhibit No. 242, excerpts from Industrial Merchandising Section, Monthly Report, April, 1956.

Government Exhibit No. 243, excerpts from Industrial Merchandising Section, Monthly Report, May, 1956.

Government Exhibit No. 244, excerpts from Industrial Merchandising Section, Monthly Report, June, 1956.

Government Exhibit No. 245, excerpt from Industrial Merchandising Section, Monthly Report, August, 1956.

Government Exhibit No. 246, excerpt from Industrial Merchandising Section, Monthly Report, November, 1956.

Government Exhibit No. 247, excerpt from Industrial Merchandising Section, Monthly Report, January, 1957.

[fol. 849] Government Exhibit No. 248, excerpt from End-Use Development Weekly News, January 27, 1956.

Government Exhibit No. 249, entitled, "Automotive Engineering with Urethane Foams," by R. H. Walsh, E. I. du Pont de Nemours and Company, Elastomers Laboratory, Wilmington, Delaware.

This is also sub-titled "Contribution No. 117."

I might also mention that this paper was delivered and also published.

That completes the Government's offer.

Mr. Reycraft: May the record show that these documents have constituted an offer of proof of the Government to

demonstrate present and future trade relations in various products in addition to and other than paints and fabrics on the grounds that it is appropriate on a hearing on relief to consider the whole area of present and future trade relations between the defendants.

The Government has made no new Section 7 charge, and we do not submit the offer of proof as such.

The Government calls Edward Townsend.

EDWARD TOWNSEND, a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reycraft:

Q. Will you state your full name, please?

A. Edward Townsend.

Q. What is your present business association, Mr. Townsend?

A. I am a vice-president and director of the First Boston Corporation.

[fol. 859] Q. What are your duties with the First Boston Corporation, sir?

A. I am in what we call our Buying Department, that is the underwriting end of the corporation.

Mr. Reycraft: Will the reporter mark for identification as Government Exhibit No. 250, the document headed, "2,269,050 shares of Gulf Oil Corporation Capital Stock."

(Thereupon said document was marked Government Exhibit 250, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, I hand you Government Exhibit No. 250. Are you familiar with this offering of stock?

A. Generally, yes.

Q. What was the date of that offering, Mr. Townsend?

A. January 27, 1948.

Q. What type of offering was it?

A. This was an offering to stockholders.

Q. In connection with that ·ring, was there any particular problem in connection with the layoff of stock?

A. Well, I think perhaps you are referring to the fact that we did buy a substantial number of rights from a group of sellers, and marketed the stock appurtenant to those rights.

Q. Approximately how many shares of stock were involved in this layoff, Mr. Townsend?

A. I don't think it shows on this sheet that you have given me, but it was a million and two hundred thousand odd shares of stock, I believe.

Q. Approximately what percentage of total offering was that, do you recall?

A. Something over 40 per cent—something between 40 and 50 per cent.

Q. Do you recall whether there was any particular prob-
[fol. 851] lem in connection with that layoff?

A. No, I don't recall any problem.

Q. Do you know the price at which the stock was laid off?

A. Again, this sheet doesn't show that. The one you have given me doesn't show it. I believe the price was 59.

Mr. Reycraft: Will the reporter please mark for identification Government Exhibit 251, a document which is headed, "1,213,443 shares of Gulf Oil Corporation Capital Stock."

(Whereupon said document was marked Government Exhibit 251, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, will you refer to Government Exhibit No. 251 and see if that document contains any further information concerning the layoff we have been referring to?

A. Yes, this sheet does.

Q. Are you able to refresh your recollection now with respect to the price at which the stock was laid off?

A. Yes. It was laid off at $59 per share.

Q. Are you able to discern from either of these documents or from your recollection the market price at the time the stock was first offered?

A. The market price at the time the stock was first offered? I don't follow that question. Are you speaking of the sale of stock——

Q. I am not speaking of the subscription price——
A. In connection with the rights——
Q. But of the price on the Stock Exchange.

Mr. Tierney: May we have that question read, please?

(Question read as follows):

"Are you able to discern from either of these documents [fol. 852] or from your recollection the market price at the time the stock was first offered? I am not speaking of the subscription price, but of the price on the Stock Exchange."

By the Witness:

A. These sheets don't reflect that, but my recollection is that the price of 59 on the stock layoff was also the closing price on the Exchange on the date that offering was released.

Mr. Reycraft: I offer Government Exhibits Nos. 250 and 251.

Mr. Burnham: Your Honor, at the time Mr. Emerson was on the stand, we had a standing objection, a series of them, to these primary rights offerings and to debenture issues. Apparently we are going into another series of similar questions and answers and documents.

May we have the same objections?

The Court: Your objections may stand.

Mr. Bushby: That goes for all the defendants, I take it?

The Court: That applies to all defendants.

(Said documents, so offered and received in evidence, were marked Government Exhibits Nos. 250 and 251.)

Mr. Reycraft: Will you mark for identification as Government Exhibit 252, a 2-page document headed "1,716,500 shares Commonwealth Edison Company Convertible Preferred Stock."

(Thereupon said document was marked Government Exhibit No. 252 for identification.)

[fol. 853] By Mr. Reycraft:

Q. Mr. Townsend, is Government Exhibit No. 252 a document which came from the files of your company?
A. Yes.

Mr. Reycraft: I offer Government Exhibit No. 252.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 252.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 253, a 2-page document headed, "1,300,000 Campbell Soup Company, Capital Stock"?

(Whereupon said document was marked Government Exhibit No. 253 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, are you familiar with the origin of this offering?

A. I don't understand what you mean by origin.

Q. Are you familiar with the reasons for the sale of this stock?

A. In a general way, yes.

Q. Will you describe them, sir?

A. These shares were held by a Foundation, as I recall it, established under the will of Dr. Dorrance, and they felt it wise to diversify their holdings.

Q. Had the stock been previously offered on any exchange?

A. No, there was no stock in the hands of the public.

Q. And do you know whether this offering was in con- [fol. 854] nection with raising funds for an estate, or for any other purpose?

A. Well, the proceeds of the sale did go to the Foundation.

Q. To the Foundation?

A. Yes.

Q. Is it your recollection that this was a successful offering?

Mr. Bushby: Well, I object to the form of question as to what is successful.

Mr. Cowen: Are we up to the problem of success again, Counsel? I thought we straigthened that out.

The Court: Yes; if the witness will describe what the form of success was.

Mr. Reycraft: Yes, that is what I was going to get into.

By the Witness:

A. The shares were successfully distributed.

By Mr. Reycraft:

Q. For the record, would you state your understanding of that term when you use it—"successful"? For example, do you consider an offer successful merely if the underwriters made a profit?

A. No, I should not consider that a test of success.

Q. Do you consider also the market price following the offering whether the market remained stable?

A. Yes, I should consider that an element of success.

Q. And do you consider also the interest of the seller of the stock?

A. Yes, I certainly should.

Q. And in taking into account these three aspects, you considered this issue successful, isn't that correct?

Mr. Cowen: Just a moment. Does the document show what the price of the market was before and after this issue on its face?

[fol. 855] The Witness: There was no market before this issue.

Mr. Cowen: Well, does it show after?

Mr. Reycraft: It shows after the date of the offering.

Mr. Cowen: Just after the date? For how many days thereafter?

The Witness: The offering was made at 39¼ dollars per share on November 17th, 1954, and this record that has been placed before me does show that our so-called trading restrictions were removed on November 17th, 1954, at which time the market was quoted at 41⅞, 42⅛.

Mr. Cowen: So that your document is restricted to that date?

The Witness: There is no further pricing information, no record of the price movements other than that.

Mr. Cowen: Is it understood that his testimony is confined to the information which is contained on the face of the document, and that is all?

Mr. Reycraft: No, the witness is familiar, I believe, with the subsequent market performance. I was going to ask him that question, since it is understood the document contains only what is in this document.

Mr. Cowen: So far as the document is concerned, it concerns only the days involved on the face of the document, right?

By Mr. Reycraft:

Q. Are you familiar, Mr. Townsend, with the subsequent market performance of this issue?

A. Not in detail.

[fol. 856] Q. In a general way are you?

A. Yes.

Q. Will you state what that performance was as you recall it?

A. Well, before very long after the offering the shares had fallen back pretty close to the offering price.

Q. And what happened to them thereafter?

A. For some time they remained just above the offering price as I recall it.

Q. And for how long a period of time did that last, Mr. Townsend?

A. I don't recall.

Q. You do not recall it falling back to the offering price, do you, sir?

A. No, I do not.

Mr. Reycraft: I offer Government's Exhibit 253.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 253.)

Mr. Reycraft: Will the reporter mark for identification as Government's Exhibit 254 a document headed, "One Million Shares of International Harvester Company Common Stock."

(Thereupon said document was marked Government Exhibit 254 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, did your company manage this issue of stock?

A. Yes, it did.

Q. And did you co-manage it with Morgan Stanley?

A. Yes, we did.

Q. But your firm ran the books, I believe, is that correct?

A. That is correct.

Q. Did you find that there was a heavy demand for this issue of stock?

A. Yes, we did.

[fol. 857] Mr. Reycraft: I offer Government's Exhibit 254.

The Court: It is admitted:

(Said document, so offered and received in evidence was marked Government Exhibit 254.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 255, a document headed, "267,678 shares of General Motors Corporation common stock, 1⅔ par value," and as Government's Exhibit 256 a document with a similar heading but which bears in the lower left-hand corner the words, "Twenty-four underwriters, February, 1958."

(Thereupon said documents were marked Government's Exhibits Nos. 255 and 256, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, will you refer to Government's Exhibit 255 and Exhibit 256? Did your firm participate in this offering?

A. Yes, we did.

Q. And what type of offering was that, Mr. Townsend?

A. This was a secondary offering.

Q. And did your firm manage this offering?

A. Yes, we did.

Q. And you ran the books?

A. That is correct.

Q. When was this issue offered?

A. The offering was released at 4:25 in the afternoon of February 17, 1958.

Q. And when were the subscription books closed?

A. At 4:30 that afternoon.

Q. Did you find that there was a heavy demand for this stock?

A. Yes, we did.

Q. Now, referring to Government's Exhibit 256, does this [fol. 858] document indicate the amount of stock which was given out for retail to underwriters?

A. Well, that isn't the way we phrase it, Mr. Reycraft. It does indicate the number of shares retained by the underwriters for their own retail sales.

Q. And it indicates—or does it indicate that one underwriter sold 50,000 shares alone?

A. No, Mr. Reycraft. It does show that one underwriter retained his entire underwriting commitment and that he also took down an additional 20,000 shares from the group.

Q. Both of which were retailed by one underwriter?

A. Well, I have nothing here to establish that they were sold, but——

Mr. Reycraft: I offer Government's Exhibits 255 and 256.

Will you mark for identification, as Government's Exhibit 257, a document, headed, $171,720,200.00, Phillips Petroleum Company Convertible Subordinated Debentures"?

(Thereupon said document was marked Government Exhibit 257, for identification.)

Mr. Reycraft: And will you mark for identification, as Government's Exhibit 258, a document which contains the initials in the lower left-hand corner "EHL", and in the right-hand corner bears the number "25"?

(Thereupon said document was marked Government Exhibit 258, for identification.)

Mr. Reycraft: And will you mark, as Government's Exhibit 259, a document which bears the heading, "$171,720,000.00 of Phillips Petroleum Company", and in the right-hand corner the number "26"?

[fol. 859] (Thereupon said document was marked Government Exhibit 259, for identification.)

Mr. Reycraft: I offer Government's Exhibits 257, 258 and 259.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 257, 258, and 259.)

Mr. Tierney: Is any one of these documents what is known as a performance record?

(Opposing Counsel conferring.)

Mr. Reycraft: Your Honor, were Government's Exhibits 255 and 256 admitted, the General Motors documents? I believe I offered them.

The Court: What is the question?

Mr. Reycraft: Were 255 and 256 admitted?

The Court: They will be admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 255 and 256.)

Mr. Reycraft: Will you mark for identification, as Government's Exhibit 260, a document headed, "1,200,759 shares Texas Gulf Sulphur Company Capital Stock," a two-page document?

(Thereupon said document was marked Government Exhibit 260, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, did your firm manage this issue?

A. Yes, we did.

Q. What type of issue was this?

A. It was a secondary offering.

[fol. 860] Q. Do you recall what the market action was in this stock immediately after the offering?

Referring to the second page, at the top, are you able to refresh your recollection?

A. Yes. The offering price was 28⅞ on April 8, 1957; and that is the bid side of the market at the close.

And the record indicates that on—no, I haven't the date; but following the offering, we covered a short position of 37,921 shares through purchases on the New York Stock Exchange at prices ranging from 29½ to 30⅛.

Q. The price of this stock thereafter declined, did it not, Mr. Townsend?

A. Not immediately; but in the ensuing months, it did, yes.

Q. Were you familiar with conditions in the sulphur industry, generally, at this time?

A. I do remember that they became rather depressed conditions—in that industry sometime after this offering.

Q. Do you recall whether the prices of stock of competitors of Texas Gulf Sulphur Company, such as Freeport Sulphur also declined?

A. I believe that is true, yes.

Mr. Reycraft: I offer Government's Exhibit 260.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 260.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 261 a document, a two-page document with the numbers 35 and 36 in the lower left hand corner, "2½ million Shares, National City Bank of New York"?

(Thereupon said document was marked Government Exhibit 261 for identification.)

Mr. Reycraft: Will you mark for identification as Government Exhibit 262 a document which bears the number "39" in the lower left hand corner, and as Government's [fol. 861] Exhibit 263 another document relating to the National City Bank issue, with the number "40" in the lower left hand corner.

(Thereupon said documents were marked Government's Exhibits 262 and 263 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to Government's Exhibits 261, 262 and 263 for identification, are each of these documents documents which came from the files of your company?

A. Yes, they are.

Q. Did your firm manage this issue?

A. We did.

Q. And do each of them relate to the issue of the National City Bank?

A. Yes, they do; the issue of 1954.

Q. Will you describe the background of this particular offering?

A. What sort of background do you refer to?

Q. Will you state whether it was usual for a bank to engage in financing of this size?

A. No, this was without precedent for a bank to raise such a large amount of capital at one time.

Q. Was it the largest offering by a bank up to this time?

A. Yes, it was.

Q. Were there any particular problems which your firm encountered in connection with this offering?

A. Such difficulties as we had arose from the size of the issue and from the fact that we had an unusually long underwriting carry.

Q. How long was that underwriting carry?

A. As I recall it, 76 or 78 days—something of that kind.

Q. Was this issue an offering to stockholders?

A. Yes, it was.

[fol. 862] Q. How was it priced in relation to the market?

A. We formed the underwriting group on August 4, 1954, and this record indicates that the stock in the afternoon of that day was quoted 54¾-55⅛. The subscription price was subsequently fixed at 52½.

Q. Did your group lay off stock in connection with this offering?

A. Yes, we made substantial sales of stock.

Q. What were the layoff prices in relation to the market price at the beginning of the offer?

A. This record indicates that the highest layoff price was 53⅞, and the lowest was 53¼.

Mr. Reycraft: I offer Government's Exhibits 261, 262 and 263.

The Court: They are admitted.

(Said documents, so offered and received in evidence, was marked Government's Exhibits Nos. 261, 262 and 263.)

Mr. Reycraft: Will the reporter please mark for identification as Government's Exhibit 264, a document with the number "26" in the lower left-hand corner, consisting of two pages, headed, "2,000,000 Shares, The First National City Bank of New York, Capital Stock"?

(Whereupon said document was marked Government Exhibit No. 264 for identification.)

Mr. Reycraft: And may we have marked for identification as Government's Exhibit 265, a one-page document with the number "28" in the lower left-hand corner, headed, "Memorandum re Prospective Commitment to Mr. George D. Woods, Chairman of the Board"?

(Whereupon said document was marked Government Exhibit No. 265 for identification.)

Mr. Reycraft: And may we have marked as Government's [fol. 863] Exhibit 266 for identification a document with the initials, "E.H.L." in the top left-hand corner, and the number "32" in the lower left-hand corner?

(Thereupon said document was marked Government's Exhibit No. 266 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to these documents, did your firm manage this issue?

A. Yes, we did.

Q. And did these documents come from the files of your firm?

A. Yes, they did.

Q. Now we have previously referred in the record to an issue of the National City Bank.

Does this corporation have any relationship to the National City Bank?

A. Yes. The National City Bank of New York had a cash merger with the First National Bank of the City of New York in early 1955; the financing, on which I have the papers here, was in 1957.

Q. So that this is the successor corporation to the one whose issue was discussed just a few minutes ago?

A. That is correct.

Q. Did this offering also have a particularly long carrying period?

A. Somewhat shorter than the other but still long—about 66 days, in this instance.

Q. What was your experience with respect to the layoffs in this instance, Mr. Townsend?

A. The subscription price was $60 per share. The first stock laid off was laid off at 60⅝ and the last layoff was at 62¾.

Q. Does this indicate that the market was rising during this offering?

A. It probably indicates that the value of the rights was rising, yes.

[fol. 864] Q. Which would reflect the market value of the stock, would it not?

A. Yes, it would tend to.

Q. Did you consider each of these First National Bank offerings a success?

A. Yes, I did.

Mr. Reycraft: I offer Government's Exhibits 264, 265 and 266.

The Court: They are admitted.

(Said exhibits, so offered and received in evidence were marked Government Exhibits 264, 265, and 266.)

The Witness: I think in your question you referred to the First National Bank. It is the First National City Bank.

By Mr. Reycraft:

Q. Pardon me?

A. I think that inadvertently you referred to "The First National Bank"; it is "The First National City Bank."

Mr. Reycraft: Will you mark for identification as Government's Exhibit 267 a document headed, "333,000 Shares Aluminium Limited Capital Stock."

(Thereupon said document was marked Government Exhibit 267 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, will you describe Government's Exhibit 267?

A. This is a sheet from our records of the secondary offering in February of 1950 of 333,000 shares of the Aluminium Limited capital stock.

Q. Is the information contained in the upper left hand corner concerning price concession, reallowance and the offering and delivery dates—was that obtained from the files of your company?

A. Yes.

[fol. 865] Mr. Reycraft: I offer Government's Exhibit 267.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 267.)

By Mr. Reycraft:

Q. Mr. Townsend, there is one question I neglected to ask you with respect to Government's Exhibit 254, the International Harvester Company offering.

Do you recall what the relationship between the amount of stock in this offering was to the volume of stock traded on the New York Stock Exchange in this particular issue?

A. Well, as a matter of fact, we made two offerings simultaneously: one of common stock, and one of preferred stock.

My recollection is that the offering of common stock represented substantially a number equivalent to the annual volume on the stock Exchange of the preceding year.

Q. And you apparently considered that as successful?

A. Yes, we did.

Mr. Reycraft: Will the Reporter please mark for identification, as Government's Exhibit 268, a document headed "33,671 Shares of Common Stock, Aluminium Limited, Offered on July 26, 1950"?

(Thereupon said document was marked Government Exhibit 268, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, did Government's Exhibit 268 come from the files of your company?

A. Yes, it did.

Mr. Reycraft: I offer Government's Exhibit 268.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 268.)

[fol. 866] Mr. Reycraft: Will the Reporter please mark, as Government's Exhibit 269, a three-page document, headed, "333,000 Shares Aluminium Limited, Capital Stock"?

(Thereupon said document was marked Government Exhibit 269, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, does Government's Exhibit 269 also refer to the issue referred to in Government's Exhibit 267?

A. Yes. They refer to the same offering.

Q. And do you recall the circumstances which lead to this offering?

A. No, I am sorry, Mr. Reycraft—there must be an error in the date here. The sheet that you gave me for Exhibit 267 dates the offering as February 27, 1950. I feel sure that must have been "February 1951".

Q. The document is in error, is that your testimony?

A. I am sure the year is misdated.

Q. The year on Government's Exhibit 267 is in error, is that correct?

A. Yes.

Mr. Reycraft: Will the reporter read the last question, please?

(Question read)

By the Witness:

A. The offering took place in the month following the judgment on the stock disposal, and I would certainly infer that the two were related.

By Mr. Reycraft:

Q. Would you refer to the second page of Government's Exhibit 269, Mr. Townsend, the bottom paragraph?

[fol. 867] Would you read that paragraph, please?

A. This is an office record which reads as follows:

> "This stock was sold pursuant to anti-trust proceedings brought by the Government. In its judgment entered July 6, 1950, the Court required certain stockholders of Aluminium Limited and Aluminum Company of America to dispose of their holdings in one of the two corporations pursuant to a plan to be submitted to the Court. Under a further judgment entered January 16, 1951, subsequent to the submission of the plan, stock-

holders holding in the aggregate 1,292,175 shares of the Common Stock of Aluminium Limited were required to dispose of all their shares in that Corporation within ten years, and, if reasonable market conditions prevail, approximately 300,000 of such shares were to be disposed of within three years and 200,000 more within five years from the entry of the judgment. Pending such disposition, the voting rights with respect to these shares will be vested in three trustees named in the judgment. Other stockholders holding in the aggregate 524,195 shares, while not required to dispose of their holdings, will be required to vest in such trustees the voting rights with respect to their shares during the disposal period."

Do you wish me to continue?

Q. Will you, please?

A. (Reading):

"Another stockholder holding 34,500 shares of Aluminum Company of America and 36,000 shares of Aluminium Limited will be required to dispose of his Shares in Aluminum Company of America and to vest in such trustees his voting rights with respect to his shares in Aluminium Limited during the disposal period. In the judgment of July 6, 1950, the divestiture of plants and properties of Aluminum Company [fol. 868] of America for which the Government had petitioned was denied but jurisdiction was retained by the Court for a period of five years from the entry of the further judgment."

Q. Referring to the next paragraph, does this document indicate the number of shares which were subscribed or could have been sold at this time?

A. It does indicate, Mr. Reycraft, that at the time of the offering the managers received indications of interest for 4 to 5 times the amount of stock available in the selling group.

Q. Which would have been over a million and one-half shares?

A. Oh, no, no. The entire offering was only 333,000 shares and the amount—and there was a large underwriting group,

so the amount allocated to dealers would have been very much less than that.

Mr. Reycraft: I offer Government's Exhibit 269.

The Court: Admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 269.)

Mr. Reycraft: Will the reporter please mark for identification as Government's Exhibit 270 the document with the number "118" in the lower right hand corner, a two-page document headed, "372,205 Shares Aluminium Limited."

(Thereupon said document was marked Government Exhibit 270 for identification.)

By Mr. Reycraft:

Q. Referring to Government's Exhibit 270, Mr. Townsend, did your firm manage this issue?

A. No. To be quite precise, we did not, Mr. Reycraft. It was an offering by the company to its shareholders, and [fol. 869] we acted as a so-called dealer-manager. That is not an underwriting.

Q. Would you explain that—the procedure?

A. We were asked by the company to form and manage a group to solicit the exercise of the rights given by the company to its shareholders.

Q. Now in connection with this offering, did any problem arise with respect to stockholders covered by the judgment referred to in the previous document?

Will you refer to the first full paragraph on the first page, beginning "Approximately 147,000 shares"?

A. Yes. I think perhaps I have another sheet there that sets it forth more clearly.

This paragraph says:

> "Approximately 147,000 shares were covered by rights held by certain stockholders who had surrendered their voting rights to trustees by the terms of the judgment dated January, 1951."

Although I do see that this is what I was looking for—"a total of 147,436 shares of the stock made available to the

managers, and simultaneously offering it in the United States and Canada," that isn't stated quite accurately.

The shares were never made available to us; the rights were sold to a group which we formed and managed for the distribution of the shares appurtenant to those rights.

Q. Do you recall whether these shares or these rights were allocable to stockholders who were required under the judgment to sell this stock?

A. No, there was no necessary identification of the two in the group which sold their rights to us. In fact, I think most, if not all, of those selling rightsholders were, in fact, subject or submitted to the jurisdiction of the court in the judgment, but I don't think they were all required to sell.

Q. These were the stockholders who were required to [fol. 870] surrender their voting rights, isn't that correct?

A. I think there is probably that identification in this issue, yes.

Mr. Reycraft: I offer Government's Exhibit 270.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 270.)

Mr. Reycraft: Will the reporter please mark for identification as Government's Exhibit 271 a document which bears the number "133" in the lower right hand corner, headed, "Aluminium Limited, 25,000 shares, February 6, 1952."

(Thereupon said document was marked Government Exhibit 271 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, did your firm manage this issue?

A. Well, this is just one of a number of sheets from the record on the issue.

I do recall that we did handle a secondary distribution of 25,000 shares, and this is a record that shows the number of dealers who participated in that distribution.

Q. Are you able to testify from your own recollection that your firm managed this issue?

A. Yes, I can confirm that, yes.

Mr. Reycraft: I offer Government's Exhibit 271.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 271.)

The Court: The Court will now recess.

(Whereupon a recess was taken in the above-entitled cause until 2:00 o'clock p. m. of the same day.)

[fol. 871] Before Hon. Walter J. LaBuy, Friday, February 27, 1959, 2:00 o'clock p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

The Clerk: Case on trial.

The Court: You may proceed.

Mr. Reycraft: The Government will call Edward Townsend.

Edward Townsend, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination (Continued):

Mr. Reycraft: Will you mark for identification, as Government Exhibit No. 272, a document headed "Aluminium Limited, 100,000 Shares of Common Stock, Offering Date March 28, 1952, Price $108.00."

It is further identified at the bottom right-hand corner with the number "[illegible]2."

(Thereupon said document was marked Government Exhibit 272, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to Government Exhibit No. 272, is this a document which came from the files of your company?

A. Yes it is.

[fol. 872] Q. Was your firm the manager of this issue?

A. Yes, we were.

Q. By reference to the file which you have with you, can you refresh your recollection with respect to the terms of this offering?

A. I am sorry. I think the pages are mixed up here a little. Just a moment.

The stock was offered at $108.00 per share.

Q. What type of offering was this, Mr. Townsend?

A. This was a secondary offering.

Q. What was the offering date?

A. March 28, 1952.

Q. Do your files show the date on which the books were opened on this issue?

A. They would have been opened on that same day, but I don't find the sheet. If you will give me another moment, I will see if I can find it.

It was March 28.

Q. Is the time indicated?

A. No, I don't seem to have here the sheet that would show that.

Q. Do your files indicate any subsequent market action with respect to this issue, or do you have any recollection of the subsequent market action?

A. I haven't found the sheets that show that transaction.

Q. Mr. Townsend, in view of the fact that that isn't indicated on your records, I will merely offer Government Exhibit No. 272.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 272.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 273, a document numbered 135 in the lower right-hand corner, headed Forty Thousand Shares [fol. 873] Common Stock Aluminium Limited, Secondary.

(Thereupon said document was marked Government Exhibit No. 273 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, are you able to identify Government Exhibit 273 as a document which came from the files of your company?

A. Yes, this is one of ours.

Q. Will you state what the terms of this offering were with respect to price spread, and so forth?

A. Unfortunately, you have given me a sheet that doesn't bear basically on the deal. This is the sheet that shows the sales made through dealers, and somehow these sheets have become confused.

Q. By reference to Government Exhibit 273, are you able to state that the price was 51?

A. Yes, this does show the price to have been 51 per share.

Q. Are you able to state that the concession was 1.125?

A. Yes.

Q. Will you state what this document means by concession? Will you state what your understanding of the term concession is?

A. That is the concession allowed to dealers.

Q. Will you state what the reallowance was on this issue?

A. It was 3/8, 37½ cents.

Mr. Reycraft: I offer Government Exhibit No. 273.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 273.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 274, the document which bears the number 136 in the lower right-hand corner and is headed [fol. 874] 186,753 shares Aluminium Limited Capital Stock, No Par Value?

(Thereupon said document was marked Government Exhibit No. 274 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, can you state the terms which were involved in this offering, of Aluminium Limited?

A. No, I can't be sure from this sheet alone.

Q. Can you state the offering price?

A. Yes, $41.75.

Q. And the concession?

A. $1.10.

Q. And the reallowance?

A. Thirty cents.

Q. Now, do these Government Exhibits 272, 273 and 274 refer to stock which was sold pursuant to the antitrust judgment involving Aluminium?

A. I cannot say that. I don't know that it was.

Q. Do you know with respect to any one of them?

A. No, I would have to at least refresh my recollection on the names of the sellers, and then I would have to relate those to the judgment.

Q. And your files do not show that?

A. Yes, the files would show the sellers. I am sure I have those files with me, but I can certainly determine who the sellers were.

Mr. Reycraft: I offer Government Exhibit No. 274 to show the basic terms of this offering.

The Court: Admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 274.)

Mr. Reycraft: Will you mark for identification as Gov-
[fol. 875] ernment Exhibit No. 275 a document which bears the numbers 115, 116 and 117, a three-page document, relating to 818,657 shares Aluminium Limited.

(Thereupon said document was marked Government Exhibit 275 for identification.)

By Mr. Reycraft:

Q. Referring to Government Exhibit No. 275, Mr. Townsend, can you describe the basic terms of this offering?

A. This was an offering by the company Aluminium, Limited to its own shareholders under rights. Subscription price was $34 in U. S. currency, and $33.50 in Canadian currency.

Q. Is this a document which came from the files of your company?

A. Yes, it is.

Mr. Reycraft: I offer Government Exhibit No. 275.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit No. 275.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 276 the document which bears the number 108 in the lower right hand corner, headed 40,000 shares Aluminium Limited?

(Thereupon said document was marked Government Exhibit 276 for identification.)

By Mr. Reycraft:

Q. Referring to Government Exhibit No. 276, Mr. Townsend, is this a document which came from the files of your company?

A. Yes, it is.

Q. Are you able to say whether this stock is stock which was sold pursuant to the antitrust judgment in the Aluminium case?

A. I do not believe it was. This particular offering was of shares held by the estate of Walter P. Inman, and that [fol. 876] estate was certainly not one of those ordered to dispose of its shares, but I think he may have submitted in his lifetime to the jurisdiction of the court prior to the judgment of the court on stock disposal.

Q. He was one of those stockholders subject to the jurisdiction of the court who voluntarily sold his stock?

A. He may well have been.

Mr. Reycraft: I offer Government's Exhibit 276.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 276.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 277 a three-page document which bears the numbers 100, 101 and 102.

(Thereupon said document was marked Government Exhibit 277 for identification.)

By Mr. Reycraft:

Q. Is Government's Exhibit 277 a document which came from the files of your company?

A. Yes, it is.

Q. And will you state what issue this document refers to?

A. This was a stockholder offering made in January of 1955. It had a subscription price of $47.66 in U. S. dollars and $46.00 per share in Canadian funds.

Mr. Reycraft: I offer Government's Exhibit 277.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 277.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 278 a document which bears the number 62 in the lower right hand corner and is headed, "200,538 [fol. 877] shares Aluminium Limited Capital Stock."

(Thereupon said document was marked Government Exhibit 278 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is Government Exhibit 278 a document which came from the files of your company?

A. Yes, it is.

Q. And did your company manage this issue?

A. Yes, I am sure we did.

Mr. Reycraft: I offer Government's Exhibit 278.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 278.)

Mr. Reycraft: Will you mark as Government's Exhibit 279 a document with the number 90 in the lower right-hand corner, headed, "40,000 shares Aluminium Limited"?

(Thereupon said document was marked Government Exhibit 279 for identification.)

By Mr. Reycraft:

Q. Referring to Government's Exhibit 279, Mr. Townsend, can you describe the type of offering which was involved here?

A. This is a secondary offering of 40,000 shares in 1955, May 5, 1955.

Q. Is this stock which was sold pursuant to the judgment?

A. This was from the estate of Edward K. Davis. My recollection is not firm. He is mentioned in the judgment, but I think he decided to sell Alcoa stock.

Q. He was a voluntary seller?

A. I believe so.

[fol. 878] Q. So his stock would be in addition to that sold mandatorily?

A. I believe so.

Mr. Reycraft: I offer Government's Exhibit 279.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 279.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 280, a 2-page document with the numbers 88 and 89 in the bottom right-hand corner, headed, "178,100 shares Aluminium Limited"?

(Thereupon said document was marked Government's Exhibit No. 280 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is this a document which came from the files of your company?

A. Yes, it is.

Q. And was this issue managed by your company?

A. Yes, it was.

Q. What type of an issue was it?

A. This was a secondary offering.

Q. And can you tell from this document whether the offering was over-subscribed?

A. Yes, the offering was over-subscribed.

Mr. Reycraft: I offer Government's Exhibit 280.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 280.)

Mr. Reycraft: Will you mark as Government's Exhibit 281, a document which bears the number 90 in the lower

right-hand corner, and is headed, "178,100 shares Alu-
[fol. 879] minium Limited," and lists the names of selling stockholders?

(Thereupon said document was marked Government Exhibit No. 281 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to Government's Exhibit 281, are you able to state whether these stockholders are persons who were selling pursuant to the antitrust judgment?

A. I believe in the case of each seller here listed that was so, yes.

Mr. Reycraft: I offer Government's Exhibit 281.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 281.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 282 a document with the number 87 in the lower right-hand corner, headed, "Aluminium Limited," and bearing the date 3/14/56 on the left-hand side?

(Thereupon said document was marked Government's Exhibit 282 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to Government's Exhibit 282, is this a document which came from your files?

A. Yes, it is.

Q. Would you take a few minutes to read this document and then I would like to ask you one or two questions about it?

A. This note reads as follows:

> "On March 13, 1956, The First Boston Corporation announced that subject to market condition, we plan to offer 138,280 shares of Aluminium Limited Capital [fol. 880] Stock after the close of The New York Stock Exchange. The concession will be approximately a dollar and a half per share."

Q. It is not necessary for you to read the whole thing. If you will just familiarize yourself with it.

(Witness examining document.)

By Mr. Reycraft:

Q. Will you state whether that offering was actually made at the time planned?

A. No, it was either withdrawn or deferred.

Q. Do you recall the reason for withdrawing or deferring this offering?

A. Yes; the seller decided he did not wish to sell. The stock had fallen too sharply in price.

Q. Do you have any recollection as to the reason you attributed to this fall in the market?

A. No, I cannot attribute a reason to it.

Q. What action did your company take subsequent to this? Was the stock reoffered at a later date?

A. A secondary distribution for the same seller was made about one week later, but in reduced amounts. Fewer shares were involved than this one I just referred to.

Q. Was it made at a higher market price than the low at which you declined to sell it?

A. Yes. The later offering was made at about $121 a share and on the previous occasion when we had deferred the offering, withdrawn it, at the time being the stock had fallen to $118.

Q. So that you were given discretion by the seller to defer the sale until such time as the market recovered?

A. No, no, that isn't quite it. The seller did not give us any discretion. He said he did not wish to sell, and, subse- [fol. 881] quently he said he was prepared to sell at a price related to our later offering price of $121.

Q. And a week later you were able to sell this stock at $121?

A. Not this stock. It was a smaller block we subsequently sold.

Mr. Reycraft: I offer Government's Exhibit 282.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 282.)

Mr. Reycraft: Will you mark as Government's Exhibit 283 the document which bears the number 86 in the lower right-hand corner and is headed, "109,000 Shares Aluminium Limited."

(Thereupon said document was marked Government Exhibit 283 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is Government's Exhibit 283 a document which came from the files of your company?

A. Yes, it is.

Q. Will you describe what type of offering this was?

A. This was a secondary offering.

Q. Will you state the terms?

A. The offering was made at the close of the market on March 20, 1956, at $121.00 per share.

Q. What time was the stock offering on March 20th?

A. After the close of the market, at 3:30, that is to say.

Q. What time were your subscription books closed?

A. They were closed at 4:30 on the same afternoon.

Q. Is this stock which was sold pursuant to the antitrust judgment?

A. Well, I cannot say that, Mr. Reycraft. The seller is one of those who was directed to dispose of the stock in the judgment.

[fol. 882] Mr. Reycraft: I offer Government's Exhibit 283.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 283.)

Mr. Reycraft: Will the Reporter please mark for identification, as Government's Exhibit 284, a document headed "46,900 Shares Aluminium Limited," which bears the number "80" in the lower right-hand corner, and is dated 5-11-56.

(Thereupon said document was marked Government Exhibit 284, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, referring to Government's Exhibit 284, for identification, was this a document which came from the files of your company?

A. Yes, it is.

Q. Will you state the type of offering referred to in this document?

A. This was a secondary offering.

Q. Was the seller a person who was directed under the antitrust judgment to sell the stock?

A. Yes, he was.

Q. Will you read the third paragraph from the bottom of this document?

A. (Reading) "The offering price was announced at 3:35 p.m., and the subscription books were immediately closed."

Mr. Reycraft: I offer Government's Exhibit 284.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 284.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 285 a document headed, "204,490 shares [fol. 883] Aluminium Limited" and bearing the number "72" in the lower right-hand corner.

(Thereupon said document was marked Government Exhibit 285 for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is Government's Exhibit 285 a document which came from the files of your company?

A. Yes, it is.

Q. What type of an offering does it refer to?

A. This was a secondary offering.

Q. What were the terms of the offering?

A. The offering price was forty-five and a half.

A concession of 95 cents was allowed to the dealers. The offering was made on May 14th.

Q. Was this offering oversubscribed?

A. Yes. The record so indicates.

Q. And was this offering made by persons who were required to sell stock under the antitrust judgment?

A. Yes, I would believe all of these sellers were required to sell, yes.

Mr. Reycraft: I offer Government's Exhibit 285.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 285.)

Mr. Reycraft: Will the reporter mark for identification as Government's Exhibit 286 a document headed, "300,000 Shares Aluminium Limited," and bearing the number "66" in the lower right-hand corner?

(Thereupon said document was marked Government Exhibit 286 for identification.)

[fol. 884] By Mr. Reycraft:

Q. Mr. Townsend, is Government's Exhibit 286 a document which came from the files of your company?

A. Yes, it is.

Q. Will you describe the type of offering involved?

A. This was a secondary offering, made on May 26, 1958, after the close of the Stock Exchange on that day.

The offering was made at $27 a share.

Q. What time were the subscription books closed?

A. They were closed on the same afternoon at four-thirty.

Q. Which was one hour after the Stock Exchange closed?

A. That is correct.

Q. Was this offering oversubscribed?

A. The record so indicates.

Mr. Reycraft: I offer Government's Exhibit 286.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 286.)

Mr. Reycraft: Will the reporter mark for identification as Government's Exhibit 287 a memorandum from James Coggeshall, Jr., to Messrs. Chappell, Ladd and Lyles, dated October 28, 1958?

(Thereupon said document was marked Government Exhibit 287 for identification.)

By Mr. Reycraft:

Q. Referring to Government's Exhibit 287 for identification, Mr. Townsend, will you describe the general nature of that document?

A. This is an office record of the telephone conversation which Mr. Coggeshall had with Mr. Holbrook of T. Mellon & Sons and Mr. Overholt of the Mellon National Bank and Trust Company.

[fol. 885] It had to do with a block of Aluminium Limited stock held in the Scaife Estate.

Q. Was that an estate which was subject to the jurisdiction of the Antitrust Court in the Aluminium case?

A. I don't know. I cannot answer that.

Q. Do you know whether the estate was required to sell its Aluminium stock?

A. I do not know.

Mr. Reycraft: Will the Reporter please mark for identification, as Government's Exhibit 288, a two-page document with the numbers "54" and "55" in the lower right-hand corner, headed, "235,156 Shares of Aluminium Limited Capital Stock"?

(Thereupon said document was marked Government Exhibit 288, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is Government's Exhibit 288 a document which came from the files of your company?

A. Yes, it is.

Q. Will you state what type of issue was involved?

A. A secondary offering.

Q. And are you familiar with the vendor who is set forth in this document? That is, do you know the identity of the person?

A. Yes.

Q. Is this a person who, to your knowledge, was subject to the antitrust decree?

A. I believe she was.

Q. Was this offering a successful offering, in your opinion?

A. Yes, the record so indicates.

Q. And does Government's Exhibit 287 refer to this transaction?

A. No, they are quite unrelated.

Q. Will you state whether there is any connection at all in the time sequence between these two transactions?

[fol. 886] You will note that Government's Exhibit 287 refers to the Scaife Estate, and Government's Exhibit 288 gives the vendor as Sarah Mellon Scaife.

A. I must amend my earlier statement. The number of shares as referred to on both pieces of paper are so nearly the same and the two times involved so close, there does certainly seem to be a relationship; but there is an error in one or the other document, and if it is the same block of stock, they can't both be right.

Q. Would you explain that, sir? In what respect?

A. Well, the memorandum about which you questioned me earlier refers to the Scaife Estate.

Q. Whereas the seller is given as the individual?

A. The seller is an individual who is still living?

Q. Was it usual practice for the sellers in these series of distributions to come to your firm and consult with you prior to making these sales?

A. I think I would like to have you repeat that question.

Mr. Reycraft: Will the Reporter please read that question?

(Question read.)

By the Witness:

A. Yes. The secondary distributions about which you questioned me today, I think in each case we were approached prior to the distribution and consulted about the distribution.

By Mr. Reycraft:

Q. And you advised them to sell, and sometimes they would defer the sales, would they?

A. Well, our advice, I think, in each case would have been related to the volume of the stock which we thought could be sold without an undue effect on the market.

[fol. 887] Q. And in each case you did give that type of advice?

A. Yes.

Mr. Reycraft: I offer Government's Exhibits 287 and 288.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 287 and 288.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 289 a document which bears the number "52" in the lower right-hand corner, and which in the first sentence refers to 452,155 shares of Aluminium Limited Capital Stock?

(Thereupon said document was marked Government's Exhibit 289, for identification.)

By Mr. Reycraft:

Q. Mr. Townsend, is Government Exhibit 289 a document that came from the files of your company?

A. Yes, it is.

Q. What was the date of this particular sale?

A. The offering was made on January 27, 1959.

Q. I understand that your syndicate records are not complete yet on this issue, is that correct, because of the recent time?

A. That is correct.

Q. Are you able to state the terms of this offering by this document?

A. Yes. 452,153 shares were offered at $30.50, less concession of 80 cents to dealers.

Q. Was this a secondary distribution?

A. This was a secondary distribution.

Mr. Reycraft: I offer Government Exhibit No. 289.

[fol. 888] The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 289.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 290, a document which bears the number

53 in the lower right-hand corner, and which is also headed 452,155 shares of Aluminium Limited?

(Thereupon said document was marked Government Exhibit No. 290 for identification.)

The Court: May I have counsels' indulgence for just a moment?

(A short recess taken.)

The Court: Proceed.

By Mr. Reycraft:

Q. Mr. Townsend, I have handed you Government Exhibit 290 for identification. Does this document refer to the same offering as Government Exhibit No. 289?

A. Yes, it is the same offering.

Mr. Reycraft: I offer Government Exhibit No. 290.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 290.)

By Mr. Reycraft:

Q. Mr. Townsend, with respect to this series of secondary distributions and rights offerings we have been referring to in these exhibits, in your opinion has this series of offerings had any effect on the market price of Aluminium stock? [fol. 889] A. If I may answer that with respect to the secondary distributions, so far as I have been able to observe, the secondary distributions which we have managed have had no lasting effect on the market price of Aluminium Limited stock.

Q. When you say they have had no lasting effect, Mr. Townsend, do you believe they have had a short term effect?

A. Yes, differing in each case.

Q. And relating to the size of the offering?

A. To the size of the offering and a good many other factors, such as the general market. I answered particularly about the secondary offerings, because the company offerings are quite different.

Q. The rights offerings?

A. The rights offerings.

Q. Now, referring to the particular offerings we have discussed, would you be able to say as to which of those had the longest depressing effect?

A. Of the secondary offerings?

Q. Yes, sir.

A. No, I have no precise recollection of that.

Q. Do you have any judgment as to the amount of time it would take the market to absorb any of these secondaries?

A. Well, at or about the time of the offering, we would know whether the market had absorbed the shares or not.

Q. Do you feel that any depressing effect would last more than a day or so?

A. Oh, it could.

Q. In your opinion, did it?

A. In one or two cases we were disappointed with the after market.

Q. How long would that last, Mr. Townsend?

A. Well, it would depend on the circumstances in each [fol. 890] case, how much of the stock had not been absorbed at the time of the original offering; that and the general state of the market would determine when a new equilibrium was established.

Q. By referring to Government's Exhibits 272 through 290, would you be able to identify any of these offerings which had an effect which lasted longer than a week?

A. No, I couldn't from these records, Mr. Reycraft.

But my recollection is that on one occasion the market dropped after the offering and did not return to its former level perhaps for as much as three or four weeks.

Q. Did you attribute that at the time to the secondary distribution or to other market conditions?

A. I think it was a combination of both. I think we may have undertaken an offering slightly too large for the then existing market.

I think perhaps we didn't oversell the issue as much as by hindsight we should have.

Q. In other words, the underwriting could have been accomplished in a slightly different way with perhaps better results?

A. Well, a different underwriting. If it had been a different number of shares it would have been a different result, I am sure.

Q. Mr. Townsend, do you know approximately how many shareholders there were in the Aluminium Company at or about the time your company began making these secondary distributions?

A. Well, our first secondary distribution was made in 1950, and I don't have a figure in mind for that time, but at the beginning of 1951 and the month the judgment was issued, there were about 5000 shareholders of Aluminium Limited.

Q. Do you know how many shareholders there are in [fol. 891] that company at the present time?

A. I believe about 48,000.

Q. In your opinion did the efforts of your company to promote the stock of Aluminium contribute to the interest of the public in this stock?

A. I believe it did.

Q. And did it generate a broader market than might otherwise have existed?

A. Well, than might have otherwise existed? Under the circumstances in which we were operating, if we had not made the effort, we think there would not have been as much interest, yes.

Q. Did your firm enter into stand-by contracts with respect to any of these issues?

A. Well, we have to be quite precise about that.

Frequently when asked to consider handling a secondary distribution, we would form a stand-by underwriting group.

That did not mean or imply or relate in any way to the seller. We had no agreement with the seller of any kind.

Q. But you would form a group sometimes as much as two weeks in advance?

A. Yes. Yes, about two weeks in advance—no, excuse me.

If I may restate that: I think the group would have been formed within a very few days of the actual offering, but under the terms of the stand-by arrangements that we made with the other underwriters, other prospective underwriters, we could commit them at any time for perhaps two calendar weeks after their execution of that stand-by underwriting agreement.

So a total period of time under those agreements might have been about two weeks.

[fol. 892] Q. Did your firm underwrite all of these secondaries?

A. Well, the ones I have testified to today, yes.

Q. Were they all underwritten, or some of them sold on a different basis?

A. No. No, in some cases they were done on what we call an agency basis.

Q. In your opinion, was each of these issues successful, using the term in the way you have defined it in your testimony?

A. Well, there were various degrees of success. Some were highly successful; some were successful; and some were less successful than we would have hoped.

Q. Were any unsuccessful?

A. Well, I referred a moment ago to one where the after market wasn't as good as we would have liked to see it, and that was one of the less successful ones.

Q. And that is one, I believe you testified, lasted how many weeks, in your judgment?

A. I think it may have dropped below the offering price and not regained the offering price for perhaps as long as two or three or even four weeks.

Q. In your opinion, Mr. Townsend, does the fact that this stock was sold pursuant to the antitrust judgment have any effect on the market price of Aluminium stock at the present time?

A. Well, at the present time, as I understand it, Mr. Reycraft, only a relatively small amount of that stock remains to be sold. I think it is something on the order of three per cent of the presently outstanding shares, and I don't, myself, think that the likelihood that that three per cent of the outstanding shares will be sold or otherwise disposed of in the next two years affects the present market, no.

Q. Do you think the fact that there were repeated sales [fol. 893] under the judgment has affected the market as it is at the present time?

A. Well, I have no idea, no opinion, as to what the market might have been ex(without) any judgment order for disposal. I have no opinion about that.

From our point of view, we have tried, in the ones we have handled, not to offer more than the market could take at a given time. That is a matter of our judgment.

Q. In your opinion, has the series of offerings as a series been a successful venture?

A. Yes, the ones to which I have testified, I think on balance have been successful distributions, yes.

Q. Do you know approximately how much of this stock, what percentage, was sold during the first two years, say, of the judgment period?

A. No. No, I don't have that figure in mind. The sales in the first three years and in the first five years exceeded those which the judgment required under certain circumstances.

Q. Was more than 50 per cent—do you know whether more than 50 per cent was sold within three years?

A. I believe it was in excess of 50 per cent of the entire amount that had to be disposed of.

Q. Are you aware of the fact, Mr. Townsend, that within the past year there has been a decrease in the price of Aluminium stock?

A. Yes.

Q. Do you attribute any of that decrease to the antitrust judgment?

A. No, I do not.

Mr. Reycraft: I have nothing further.

Mr. Cox: No questions.

Mr. Bushby: No questions.

The Witness: May I correct one impression I may have given this morning?

The Court: Yes, you may.

[fol. 894] The Witness: I think I gave the impression this morning in testifying about a secondary distribution of Campbell Soup, I may have given the impression that that stock never dropped below the offering price.

That isn't the fact, and I didn't mean to give that impression.

By Mr. Reycraft:

Q. Would you explain your answer a little bit?

Would you state, if you recall, how long it was after the offering that the price dropped?

A. I was just looking for my notes to refresh my recollection on that.

Q. Does this exhibit help you?

A. What I intended to imply this morning was that the price had not dropped below the offering price for some period after the offering was made.

The offering was made on November 17, 1954, and the stock was listed on the New York Stock Exchange on December 13 of that same year.

The stock which had been offered at 39¼ in November, the first trade on the Exchange was at $42 per share. So for that period of, roughly, 30 days, it remained above the offering price. However, subsequently it fell, and fell rather sharply. I think it was in the low 30s for some time.

Q. Do you have any judgment as to the reasons for that decline?

A. Well, hindsight; in my opinion we listed on the Stock Exchange too early.

Q. Do you have any judgment as to the original pricing of the stock?

A. The offering was fully priced, as we say. It was being sold by a fiduciary, and that fiduciary felt that he must get [fol. 895] the highest possible price, and we felt we gave him that, and that resulted in what we refer to in the trade as a fully priced issue.

Q. Did your firm participate in the Ford issue?

A. Yes, we did.

Q. Were your problems in the Campbell Soup situation similar in any respect to those in the Ford issue?

A. Yes, there certainly were some similarities.

Q. Were there similarities with respect to the original pricing of the stock?

A. Yes, in that there had been no previous public market for either one.

Q. Do you think it would be fair to describe the Ford stock as fully priced?

A. Yes.

Q. Did you have a similar problem with respect to a fiduciary making the sales, sir?

A. Yes, again there was a similarity there, I think?

The Court: I was going to suggest that the purchasers of Ford stock, I think, would agree with the witness.

Mr. Reycraft: No further questions.

(Witness excused.)

Mr. Andrews: I will ask that this document be marked Government Exhibit 291 for identification.

(Thereupon said document was marked Government Exhibit 291 for identification.)

Mr. Andrews: Your Honor, at this time I would like to offer into evidence Government Exhibit 291 for identification, which consists of a 40-page document showing secondary distributions approved by National Security Exchanges and certain other information regarding these distributions.

[fol. 896] This document consists of a number of tables prepared by the Securities and Exchange Commission in its regular course of business and published by that agency quarterly.

The exhibits cover a time period commencing with the quarter ending March 30, 1948 and running through the quarter ending December 31, 1957.

I believe that we have a stipulation from the parties that if a witness was called from the Securities and Exchange Commission, he would testify that the tables in these documents were prepared in the regular course of business of the Securities and Exchange Commission, and the data and information contained in these tables are accurate.

The Court: Are there any objections?

Mr. Bushby: I wouldn't stipulate that it was prepared in the ordinary course of business.

I don't think the S.E.C. has any business to do this. It is something they carry on extra curricular. I would concede the man down there did his work faithfully on statistics.

But it is the same old problem, the same basis of objection.

Mr. Andrews: I would like to clear up this question of the stipulation. Do we have a stipulation as I stated?

Did I state the stipulation accurately?

Mr. Gribbon: I don't want to get into the middle of this. We are prepared to let it go in without the witness insofar as the accuracy is concerned.

Mr. Andrews: I thought we had such a stipulation.

[fol. 897] Mr. Gribbon: Your Honor, is it satisfactory to say we agree as to the accuracy of the material put down in here, and we do not demand that the witness be called to support it?

Mr. Cox: From the SEC.

Mr. Bushby: I don't demand a witness to support it, but I object to the statement that this is part of the business of the SEC.

The Court: Is there any objection to it being received in evidence?

Mr. Bushby: Yes, indeed.

The Court: State the objection.

Mr. Bushby: This is the same problem posed by other exhibits of the Government. This is a list of so-called offerings, which are incomplete without a man on the stand, the manager of the issue, to give the surrounding circumstances, such as Mr. Townsend has done here from The First Boston Corporation.

This is a lot of dollar figures. They have tried these exhibits before, in other forms, compiled from Morgan Stanley and compiled from their own computations, and Your Honor has consistently sustained the objection.

I ask that the same objection be sustained.

The Court: Objection sustained.

Mr. Andrews: Your Honor, this is not the same exhibit we have offered before. I will state this. I am not offering this to show that these secondary distributions were successful or unsuccessful.

Furthermore, the exhibit nowhere states whether they were or were not. If I were allowed to continue, I would like to say something as to this.

[fol. 898] The Court: Yes?

Mr. Andrews: Your Honor, I think the breadth of the market generally as to the number of secondaries that have been offered in the past is very relevant to the issues in this case. I think it is quite one thing to show that perhaps only 100 offerings of secondaries was made in the last ten years; I think it is quite another if 1,000 was offered.

This exhibit does no more than that.

The Court: I understand Counsel's objection is directed to the fact there is no one to explain them; is that right?

Mr. Bushby: There is no managing head who is familiar with these issues, as Mr. Townsend was and as Mr. Emerson was, in the case of those.

The Court: Well, so they could be cross-examined.

Mr. Andrews: Well, Your Honor, I would like to state if I called somebody from the Securities and Exchange Commission, all he could state is the data is accurate as we have it here. The circumstances surrounding these offerings—he could not testify to that, and, furthermore, I am not offering it for any circumstances surrounding this, except what is contained in this table.

This is the only purpose for which I am offering it.

Mr. Bushby: We do not suggest that the gentleman from the SEC—he could not do us any good; we do not dispute he did not do his work accurately.

Mr. Andrews: Well, I would like to know, Your Honor, just what circumstances Mr. Bushby is referring to. Just what is it he would like to know?

Mr. Bushby: Well, in the case of that particular issue, as Mr. Townsend and Mr. Emerson testified to——

[fol. 899] Mr. Andrews: Well, I think what we were establishing through Mr. Townsend was a different matter than what we are trying to show with this table.

The Court: Well, I will reserve ruling on it until later. Proceed with something else. I will have to look it over.

Mr. Burnham: Your Honor, just so the record will be clear, we join in the same objection as the others.

The Court: Very well.

Mr. Andrews: As I understand it, you want us to proceed?

The Court: Proceed with something else until I get a chance to read this.

Mr. Metzger: As the next witness, the Government calls Mr. Alfred Boni.

Mr. Bushby: If Your Honor please, in respect to the witness who is taking the stand, do I understand that we have a 4:00 o'clock adjournment today for trains, and things?

The Court: Yes, the Court will adjourn at 4:00 o'clock.

ALFRED BONI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Metzger:

Q. Will you state your name and address for the record, please?

A. My name is Alfred Boni, B-o-n-i. I reside at One Washington Square Village, New York City.

Q. Mr. Boni, what is your occupation?

A. I am a consultant and President of Boni, Watkins, Jason & Co., Inc.

[fol. 900] Q. What is your function with that firm, sir?

A. I am President of that firm.

Q. Would you explain in a little bit more detail the operation and the nature of the operation of that firm?

A. Yes. The firm styles itself as Economic and Management Consultants. We engage in a general consulting practice.

Q. What do "Economic and Management Consultants" do?

A. Financial consulting, economic consulting, dealing with generally, practically every type of business management problem.

Q. And what is your function with this firm, sir?

A. In addition to my administrative duties, as the head of the firm, I have over the years headed numerous projects, particularly those dealing with financial problems.

Q. Could you name a few of those projects, sir?

A. Yes. The first I can think of is a consultantship for the New York Stock Exchange dealing with the problems of the capital gains tax; consultantship to the Cities of New Haven and Hartford in relation to a bus fare case; numerous valuations dealing with mergers, acquisitions, State tax problems.

Q. Did you say evaluations, sir?

A. Valuations of securities, patents and other types of properties.

Q. I see. Would you continue?

A. Development of economic testimony for the presentation of various Congressional Committees, including the House Ways and Means Committee, the Senate Committee on Banking and Currency, Joint Committee on Taxation.

Q. Mr. Boni, how long have you been with this firm?

A. I have been with this firm since 1948, when I organized the firm.

[fol. 901] Q. Could you give us your professional background prior to that time, sir?

A. Yes. Prior to that time, between 1938 and 1948, I was with the firm of Karl D. Pettit, investment managers and counselors. My duties there were to head the research department and also I was in charge of portfolio management.

Q. Whose portfolios?

A. Management portfolios of various clients—corporate clients, institutional clients, individual clients.

Q. About what was the extent of your total portfolio?

A. I would say it ran between 25 million and 35 million dollars.

During this period, I was also called upon by the General Counsel of the War Shipping Administration to testify before the President's Advisory Board on Just Compensation.

This was a board made up of Judges Hahn, Parker and Hutchinson, and had to do with a controversy between the General Accounting Office and the War Shipping Administration relative to evaluation standards.

Q. What other connections have you had, sir?

A. In 1945 we organized the partnership of Pettit-Bausman and Company, of which I was a partner of this firm, which was engaged in the general economic consulting practice.

Prior to this, I was Vice-President of the Milbank Management Corporation, which again was a firm of investment managers and counselors. My duties there were again to head the Research Department and head the management of the portfolios.

Our customers there, again, also were insurance companies, other institutional investors, and private individuals.

[fol. 902] Between 1930 and 1936 I was a vice-president

of the Mercer Allied Corporation. This was similarly, a firm of investment managers and counselors.

I was a party to the organization of that company, and also in setting up its research staff, which numbered some 40 people.

Prior to this, in the mid-'20s, I was associated with a man named H. R. Gore, who was a certified public accountant and utility specialist. There I did a considerable amount of work in connection with rate cases, the preparation of evidence for submission to various public utility commissions.

Q. Have you ever written for professional journals or magazine articles, or publications?

—. Yes, I have written for the "Commercial & Financial Chronicle;" I have written for the "Journal of Commerce"; I have written for the official publication of the New York Society of Certified Public Accountants, for the Michigan State Society of Certified Public Accountants.

I have written for the "Controller," which is the official magazine of the Controllers' Society.

Q. What is a controller, sir?

A. I am sorry: I didn't hear you.

Q. What is a controller?

A. That is the official publication of—I think they call themselves "The Controllers Society of America," which is made up of a membership of controllers of major companies.

I also wrote the Inventory Section of J. K. Lasser's Accountants' Handbook, published by McGraw-Hill in 1956.

Q. Have you ever testified before, sir?

A. Yes, I have testified in the Federal Courts, in the [fol 903] District Courts, and before the United States Court of Claims, before the United States Tax Court, the New York Supreme Court, the New York State—I guess it is the New York Arbitration Society. I have appeared also as a witness before various administrative bodies, including the War Shipping Administration and the Internal Revenue Service.

Q. Besides these appearances, have you prepared materials for briefs to be submitted to Governmental bodies?

A. Yes. I headed a group in our organization which prepared a brief for the Interstate Commerce Commission in

connection with a matter on the refinancing of the Boston-Maine Railroad.

I represented trade associations and other bodies—I think I mentioned those before—for the presentation of evidence to various Congressional Committees.

Q. By and large, what has been the subject matter of your testimony before these bodies?

A. Problems dealing with taxation, Regulation "W," excise taxes, excess profits taxes, last-in, first-out method of inventory, Regulation "W," which was the credit rating regulation.

Q. Mr. Boni, what was your first contact with this case?

A. When you and Mr. Reycraft walked into our office.

Q. And what were you asked to do?.

A. I was asked to make a study of the price and volume characteristics of General Motors and du Pont to determine what impact, if any, there would be on the prices of those securities in the event of divestiture by du Pont.

Q. Were you given any further directions as to the direction this study would take?

A. No.

[fol. 904] Q. Was any indication made of what findings might be desirable?

A. No.

Q. Upon the completion of this study, were there any changes suggested to you?

A. No.

Q. In other words, this study is the result of your independent research?

A. It is.

Q. You were, however, hired to do that job, were you not?

A. Yes, we were.

Q. Thank you, sir.

Would you please briefly state the purpose and the nature of the study you have made, Mr. Boni?

A. May I refer to my notes?

Q. Are these your notes, sir?

A. Yes, they are.

Q. Were they prepared by you?

A. Yes, they were.

Mr. Metzger: Is that acceptable to the Court?

The Court: Is there any objection?

Have you exhausted your memory?

The Witness: Well, to the extent of detailing——

The Court: You can't answer the question without referring to your notes?

The Witness: I think I could answer the question, but——

The Court: If you can testify without referring to the notes, you may do so,—you should do so.

By Mr. Metzger:

Q. Mr. Boni, is the extent and nature of your testimony such that you would feel it more proper for you to refer to these notes?

A. I think it would, yes.

Q. What is the general nature of these notes? Do they relate at all to the study you have made?

[fol. 905] A. Yes, they are a detailed analysis of the various exhibits which I had prepared, explaining them and analyzing them.

The Court: He may refer to the notes.

By the Witness:

A. (Continuing) This was a study of price behavior and volume characteristics of General Motors Corporation and E. I. du Pont de Nemours and Company common stocks, both severally and relative to transactions of other listed stocks on the primary security markets. It was the ultimate purpose of the study to establish criteria whereby to assess the extent of any probable impacts on the price of the respective securities, of the proposed divestiture by du Pont of its General Motors holdings consisting of 63 million shares of common stock in its own hands and 535——

Mr. Tierney: I object to the witness reading from a prepared speech.

The Court: I think you should ask him questions on that, counsel.

Mr. Metzger: If Your Honor please, this study was prepared in two volumes, Volume 1 and Volume 2, both of which were served on the parties; and the nature of this witness' testimony covers Volume 2, with the statistics and evidentiary material which will be offered at this hearing.

Volume 1 was the inference to be drawn from that material. It is quite long and complicated.

All the parties have copies of Volume 1.

The Court: Instead of the witness reading the statement, I think he should describe what these exhibits are, and then you can ask him some questions.

[fol. 906] Mr. Metzger: Your Honor, Volume 1 was conceived of as an economic study; Volume 2 was conceived of as documents in support of the study, so that what you are asking is a reversal of the order.

The Court: May I see your notes?

(Witness hands document to the Court.)

The Court: These notes consist of 92 typewritten pages.

Mr. Metzger: Your Honor, you were given, at the outset of this hearing, a copy of Volume 1, just as all of the parties have been given copies of Volume 1.

These notes to which the witness is referring will be deviated from by Counsel, and other questions will be asked.

I am sure that Mr. Tierney and Mr. Cox and the other gentlemen representing the parties will want to have the points clarified. Without reference to those notes, the witness will be asked to call on his memory for quite detailed evidence.

The Court: I think you might ask questions and he may refer to them; but I see no propriety in him reading a volume of notes consisting of 92 pages.

Mr. Metzger: If the Court please, these notes are no more than a setting forth of the documents that have previously been referred to, and a detailed economic study.

It calls for several very close conclusions, for some very fine analyses, and to try and call to mind each and every point, or any particular point on this would call for the witness to be risking perhaps too much. This is the witness's [fol. 907] effort——

The Court: Do Counsel have any objection to his reading his notes into the record?

Mr. Tierney: Yes, Your Honor. We object.

Mr. Metzger: What is the nature of your objection, sir?

Mr. Tierney: It appears that he is about to read a 92-page speech that he has prepared, and I object to it.

Mr. Metzger: That is not correct, sir.

Mr. Tierney: Well, if he needs his recollection refreshed, he could refer to the notes; but it is improper examination to put a man on to read a speech—and it is a speech, and I object to it.

The Court: I will have to sustain the objection. I think you should ask some questions pertaining to these exhibits.

Mr. Metzger: Sir, the exhibits are in support of the economic study. The notes relate to the economic study.

By Mr. Metzger:

Q. Mr. Boni, could you tell us how you organized this study?

A. Yes. The study was organized in five parts. The first part deals with the composition of primary markets; the second part is an analysis of the price behavior of the securities market, as a whole, and other pertinent price data. Part 3 deals with volume characteristics of the market, with particular regard to these two securities; and again, with the market as a whole, with the industrial groups, of which these two corporations were members.

Part 4 deals with the value of the transactions; in other words, the fourth part combines the factors of price and volume; and the fifth part relates to my summaries and conclusions.

[fol. 908] Q. What material is in this first part?

A. The first part is a general introduction, providing a frame of reference in which to examine these various exhibits and statistics; and it deals with a summary description of the primary market.

Q. And what is this primary market, sir?

A. The primary market consists of fourteen national registered exchanges and the so-called over-the-counter market. And what this analysis shows isn't measured either in shares or value of the transactions, but this market is centered largely in the New York Stock Exchange and the American Stock Exchange.

Mr. Tierney: If the Court please, I would like to have the record show that the witness is reading verbatim from the document that he has.

Mr. Metzger: I object to that.

If you refer to the document, you will see that the witness' statement is not verbatim.

The Court: Can you answer the question without referring to your notes?

By the Witness:

A. In part. For instance, the next part deals with numbers, as to what percentages they account for. I do not accurately remember these percentages; nor, for example, there are fourteen stock exchanges—I do not recall, without reference to my notes, the names of these fourteen exchanges.

The Court: You may refer to your notes for that.

By the Witness:

A. These two exchanges, that is the New York Stock Exchange——

[fol. 909] By Mr. Metzger:

Q. Will you speak into the microphone, please?

A. (Continuing) These two exchanges, that is, the American Stock Exchange and the New York Stock Exchange, in 1957, accounted for 87.8 per cent of the shares traded on registered exchanges, and they accounted for 92.8 per cent of the total value of such transactions.

I might add parenthetically here that the other registered exchanges in alphabetical order are: Boston, Chicago, Cincinnati, Detroit, Midwest Exchange, The New Orleans Exchange, Pacific Coast Exchange, Philadelphia-Baltimore Exchange, Pittsburgh Exchange, Salt Lake and San Francisco and Spokane Exchanges.

In addition, there are four other exchanges which do not report to the SEC, because they are not of sufficient consequence.

Mr. Metzger: If it please the Court, the testimony of this witness will be supported by a series of documents, of exhibits and schedules, each of which have been supplied to the defendants, a copy of which has been supplied to the Court, and a copy to the reporter.

I would like to have these exhibits as they are reached severally marked for identification and severally admitted, if this procedure pleases the Court.

The Court: It may be marked.

Mr. Metzger: I would like to have marked for identification as Government Exhibit No. 292, Exhibit 1, a large black volume entitled, "Volume 2 of the Boni Study."

(Said exhibit was marked as Government Exhibit No. 292 for identification.)

[fol. 910] By Mr. Metzger:

Q. Mr. Boni, will you refer to Government's Exhibit 292 for identification, referred to as Exhibit 1 in your volume entitled, "U. S. vs. E. I. du Pont de Nemours and Company, et al.", Market Consequences of Divestiture, Volume 2"?

A. Yes, I have it here.

Q. This study breaks down the two major exchanges, all other exchanges, and total exchanges, is that correct?

A. That is correct.

Q. The second column is percentages of total registered of the two versus the total; and the third is the market value of shares traded; the fourth is the per cent of total registered exchanges, again relating the New York and the American Stock Exchanges to all others.

A. That is correct.

Mr. Metzger: I offer Government's Exhibit No. 292.

Mr. Cox: Mr. Metzger, and may it please the Court, I have no objection to this exhibit, but you will recall that it rests in part on unpublished tables supplied by the New York Stock Exchange.

We have not checked its accuracy, so far as it relates to those unpublished tables; so if you will be kind enough to give us access to these unpublished tables, we will check those outside the Court.

Is that feasible?

Mr. Metzger: Does this objection apply to a number of other documents, sir?

Mr. Cox: It is not really an objection, Mr. Metzger.

In the first instance, I am asking whether you will let us see the unpublished tables, so that we can check them against this——

[fol. 911] Mr. Metzger: Does this statement apply to several others?

Mr. Cox: I think it does. I think there are some other exhibits here that rest on those tables.

Mr. Metzger: If it please the Court, referring to this statement just made by Mr. Cox, this refers also to a series of objections as far as the pre-trial authentication of documents is concerned that was submitted by du Pont.

The Court: Well, as I understand it, counsel is not objecting. He is asking for some verifying data.

Mr. Metzger: Yes, Your Honor, and that is what I wanted to get into.

The Court: If you have that, that will settle the argument in a hurry.

Mr. Metzger: In submitting this table to the defendants, we stated that unpublished tables were supplied by the New York Stock Exchange. The New York Stock Exchange supplied this material subject to our going to their Exchange and reading them, copying them there.

Our understanding of the pre-trial order in relation to source material, as to statistical and similar tabulations——

The Court: If you would answer the Court as to whether or not you have this information that counsel is seeking, I think we can move along a little faster.

Do you have that information?

Mr. Metzger: Wo do not have that information.

The Court: And you cannot get it for them?

[fol. 912] Mr. Metzger: This is not in our custody, Your Honor. The information that we have in these tables has been copied verbatim from tables available at the New York Stock Exchange.

We made this fact known to all parties at the time. This applies to a number of items. The statistical tables were stated, the source material, in this instance, Securities and Exchange Commission Annual Report, unpublished tables supplied by the New York Stock Exchange, Securities and Exchange Commission Statistical Bulletin Monthly Issues.

Now, we made the statement——

The Court: Pardon me. Mr. Cox, you have heard the reply. He doesn't have the information that you want.

Mr. Metzger: If it please the Court, the information that he wants——

The Court: Just a minute, please. Do you have any objection to the admission of this document?

Mr. Cox: I will not object to it provided it is admitted on condition that we have to check the tables, and if we find errors, they may be corrected.

The Court: All right. It is received conditionally.

Mr. Metzger: May I go on with that point a little more?

The Court: I don't see any need for it.

Mr. Metzger: There was a pre-trial——

The Court: Counsel is going to check whatever records he can find on the subject, and that may be the last of it. So let's not waste any further time on it, counsel. Let's move on.

It is admitted in evidence.

[fol. 913] (Said document, so offered and received in evidence, was marked Government Exhibit No. 292.)

By Mr. Metzger:

Q. Again referring to Government Exhibit 292, Mr. Boni, what does this document show?

The Court: Which one is Exhibit 292?

Mr. Metzger: That is Exhibit 1 in this document, sir?

The Court: Oh, yes, in the upper right-hand corner, Exhibit 1. Very well.

By Mr. Metzger:

Q. What does this document show?

A. This document shows that there is a remarkable stability in the relative importance of these various exchanges over the period of 1946 through 1957.

Mr. Tierney: The witness is now reading from Page 3 of the document he has in his hand, are you not? Word for word?

The Witness: No, I am not. I am referring to it, but the words you will find quite different.

Mr. Tierney: "Remarkable stability". I object.

The Court: That could be a coincidence, counsel.

Proceed.

By the Witness:

A. (Continuing) For example, it shows that the New York and American Stock Exchanges——

The Court: Would you face forward and speak a little slower?

Every time you turn away, we can't hear you.

[fol. 914] By the Witness:

A. (Continuing) Yes.

It shows that taken together, that is, the New York and American Stock Exchanges, range from a high of 89.9 per cent in 1950 to a low of 85.1 per cent in 1946.

With respect to the value of shares traded, it shows that this range was from 96.6 per cent, the high point in 1946, to 92.1 per cent, the low point in 1953.

By Mr. Metzger:

Q. Where did you get that last bit of information, Mr Boni, referring to Government Exhibit 292?

A. That will be Government Exhibit 293, which is Exhibit 1 of Volume 2.

Q. Yes. Where on that table may you find it, sir?

A. Well, it is per cent of total registered exchanges in the columns. You have got to add columns 5 and 6, which is the New York Stock Exchange, and then the American Stock Exchange, and that gives you the total percentages as I have read them.

Q. Percentage in terms of volume?

A. Per cent. The first deals with volume of shares traded.

There are two sections to this exhibit.

Q. Volume would be on items 12 and 13, would it not?

A. Per cent. The first deals with volume of shares traded. That is lines 5 and 6.

The market value of shares traded in millions of dollars percentages are on lines 12 and 13, that is correct. You will find that those groups of percentages add up to 100.

In other words, let's look at 1946, 66.4, 18.7, 14.9, add up to 100.

[fol. 915] In order to get the combined figures which I

have read, you have got to combine those two lines. Similarly in terms of the value of the shares.

Q. So that in terms of dollars the total figure in 1946 for the American and the New York Stock Exchanges would be found by adding them together, 96.6 per cent——

A. In terms of value, 96.6. In terms of shares traded, 85.1.

Q. Now, just in terms of dollars, sir, what is the low point in this period of twelve years you have studied here?

A. The low point is in 1946, in terms of volume traded——

Q. In terms of dollars, sir.

A. And in terms of dollars, the low point is in 1953.

Q. 1953 was 85.3 and 6.8, or a total of 92.1?

A. That is correct.

Q. So, then, you may say the total value trading on registered stock exchanges varied?

A. Between 96.6 and 92.1.

Q. For the New York and American Stock Exchange?

A. That is correct.

In terms of shares, it ranged from 89.9 to 85.1.

Q. What of listings of stocks, sir? How do these two stock exchanges stand up in the matter of listed stocks against all registered stock exchanges?

A. As of June 30, 1957, there were 3435 stocks listed on all exchanges, that is, registered exchanges.

Of this number, the New York and American Stock Exchanges accounted for 2125 of the total, or 60——

Mr. Tierney: What page are you reading from now, Mr. Boni?

The Witness: I am reading the numbers that I have on page 3.

[fol. 916] Mr. Tierney: Of your notes, I object to it.

Mr. Metzger: I submit, Your Honor, once again, that this constant——

The Court: If he has exhausted his memory and he can't answer the question without referring to the notes, he may do so.

I overrule the objection.

By Mr. Metzger:

Q. Would you continue, sir?

A. In terms of percentages, New York and American Exchanges, per cent of stock listings in New York and Ameri-

can Stock Exchanges, accounted for 61.9 per cent of stock listed.

Again, these fluctuated over the period 1946 through 1957, with a narrow range of 84 per cent, the low point in 1949, and the maximum which was reached in 1955 of 86.5 per cent.

Q. That is in value or the volume of trading?

A. No, this is in terms of stock listings.

Q. I see. Then those two exchanges ranged between what and what?

A. Between 84 per cent in 1949 and 86.5 per cent in 1955.

It is also interesting in this regard that both the beginning point and the end point were almost identical. In 1946 there was 85.7 per cent of the total, and in 1957 there was 85.6 per cent of the total, indicating that there was very little shifting going on among the exchanges as to listings, as to value of securities, or as to numbers of shares traded.

Q. What of the proportion of shares traded annually on registered stock exchanges?

A. I didn't quite understand your question.

[fol. 917] Q. Well, you have just testified that the beginning period of 1946 you had 85.7 per cent of trading between these two exchanges.

In 1957, 85.6 per cent.

A. That is right.

Q. Now, of the number of shares traded annually on registered exchanges, what of the terminal dates of those in the same regard?

A. Did you ask as to the value?

Q. On the New York Stock Exchange.

A. Was it the value you asked about or the number of shares?

Q. Number of shares on the New York Stock Exchange?

A. Number of shares traded, in 1946 it was 85.1, and in 1957, it was 87.8.

Q. Now, referring, sir, solely to the New York Stock Exchange and the second group of figures, I believe, is Number 5 on your Exhibit 1, Government Exhibit 292.

I note that the New York Stock Exchange varied between 66.4 and 76 as a low and a high, is that correct?

A. That is correct.

Q. Do you find any significance in these figures relating solely to the New York Stock Exchange?

A. I am sorry——

Q. Do you find any significance in this Column 5 relating solely to the New York Stock Exchange?

A. Yes, it follows the pattern of stability.

There were here variations that you might expect on an overall basis, but again, they refer to the share of the market. The New York Stock Exchange share of the market measured in terms of shares traded was pretty steady, being almost identical at the beginning of the period and at the end of the period.

Q. And this relative stability you have just testified to relates also to the volume of transactions handled on the [fol. 918] New York Stock Exchange or Item 12?

A. Item 12 is the value, not the volume.

Q. The value, I am sorry.

A. Yes. It was 85.7 in 1946 and 85.6 per cent, the total in 1957.

Q. Mr. Boni, this exhibit relates solely to registered stock exchanges; are there any other stock exchanges?

A. Well, there is what is known as the over-the-counter market.

Q. Are there any other than registered stock exchanges?

A. Well, the over-the-counter market is not a registered stock exchange.

Q. Is it a stock exchange?

A. In the broad sense, yes.

Q. Would you explain what you mean when you say the over-the-counter market, sir?

A. This is a market or a marketplace for securities which are not registered on any of the registered exchanges, although it does so happen for various reasons that even securities that are registered on the registered exchange are sold in the over-the-counter market.

Q. I am not sure I follow you all the way, sir.

How would I go about going to the over-the-counter market?

A. Well, you might feel that by going to an over-the-counter dealer, having a block of stock, that you could do better through him where he would essentially go around selling the securities than if you were to place your securities, assuming they were registered on the New York Stock

Exchange, purely through the competitive bidding that goes on through the New York Stock Exchange.

On the over-the-counter market you have the choice of selling your securities at a fixed price to the dealer without [fol. 919] regard to the commissions where he becomes the principal, so to speak, or you have the opportunity of selling to him where he adds a commission and acts as your broker.

It is a more flexible operation and there are people who have resorted to it.

Q. Mr. Boni, how many stocks are sold over the over-the-counter stock exchange?

A. Well, there are no official figures. However, there was a study made by William J. Hudson, Jr., called "America's Biggest Stock Market," published by Monumental Press in Baltimore, Maryland, in 1952, in which he estimated there were 25,000 different securities sold on the over-the-counter market.

(Mr. Tierney spoke inaudibly.)

Mr. Reycraft: Your Honor, I object to Mr. Tierney's rude remarks.

The Witness: Well, I invite you to look at this here. (Indicating).

Mr. Tierney: Well, he is reading that.

The Court: Well, the Court will rule he may refer to it if he cannot remember the material that was used.

Mr. Reycraft: Your Honor, if I may, we are close to adjournment, and I would like to take up a question with reference to this Aluminium matter. We have had our economist prepare some tables relating to this divestiture under the judgment and it is out of an abundance of caution.

I do not intend to offer them at this time but we do intend to put our economist on the stand.

I should just like to be sure we do not have to have Mr. Townsend remain over in order to explain this. He has been [fol. 920] on the stand and been available for cross examination.

I would assume whatever objections will be made will not be made on that particular ground.

The Court: Well, will counsel for the defense——

Mr. Cox: As far as I am concerned, may it please the Court, I would like an opportunity to check these tables, but

I have no intention of asking the Government to recall Mr. Townsend.

The Court: Is that agreeable with all counsel?

Mr. Burnham: As far as Mr. Townsend, it is perfectly agreeable.

The Court: Very well.

By Mr. Metzger:

Q. Have you made any attempt to relate this study that you have made, sir, to the over-the-counter market we have just been discussing?

A. No, I have not.

Q. For what reasons?

A. There are no official——

Mr. Tierney: I object to it.

It is immaterial what his reasons were.

Mr. Metzger: May it please the Court, we are dealing with an economic study.

The Court: He may answer.

By the Witness:

A. There are no official data on the over-the-counter markets, and I think the reason that it is of interest here is that it shows that there is a very substantial market for securities outside of the New York Stock Exchange.

I am not prepared to qualify it, however.

[fol. 921] By Mr. Metzger:

Q. But, to the extent that there are such exchanges, sir, would they not supplement the registered exchanges——

Mr. Tierney: Just a moment. I object to that. The witness has just said he is not qualified to express an opinion on that.

Counsel then followed right up with a question asking him to.

Mr. Metzger: I have not finished the question, Your Honor.

The Court: Continue with your question.

By Mr. Metzger:

Q. (Continuing) To the extent that there are such markets, do they not supplement the registered exchanges as to a source for distribution of securities?

A. Yes, they do.

Q. Limiting ourselves then solely to registered exchanges would you offer us some sort of a summation of the value of this exhibit, Number 1, in your study, Government's Exhibit 292?

A. Well, I have prepared a little summary table here for the year 1957, which shows that on the basis of shares traded that year the New York Stock Exchange accounted for 66.8 per cent of the total; the American, 21 per cent, all others 12.2 per cent.

Based on the values of transactions the New York Stock Exchange accounted for 85.6 per cent; the American 7.2; all others 7.2.

Based on the numbers of listings of issues, the New York Stock Exchange accounted for only 44.3 per cent. The American was 17.6 and the "All Others" this time exceeded [fols. 922-923] the American Stock Exchange, accounting for 38.1 per cent of all stocks listed.

Q. From the fact, sir, that some 61—no, let's see—55.7 per cent of all listed stocks are on exchanges other than the New York Stock Exchange, and despite that, that 66.8 per cent of the trading and 85.6 per cent of the value of all transactions occurred on the New York Stock Exchange, which conclusions have you reached with relation to the relative importance of that exchange?

A. Well, that by and large the higher priced issues and, to some extent, it is an indication that the better issues—better regarded issues—are traded on the New York Stock Exchange and American Stock Exchange.

For example, it would show quite—I think what these figures indicate in terms of the stocks on the minor exchanges, that they are influenced by the so-called "penny stocks" and low-priced stocks and, on the other hand, the concentration of value of the New York Stock Exchange is a reflection of the high priced stocks, quality stocks that are traded on that exchange.

Q. What would you consider to be a quality stock, sir?

A. A quality stock is a stock of a company which has been in business for a good number of years, with a history of earnings, a history of dividends, with investor acceptance —and by "investor acceptance," I mean finding its way into the portfolios of the better investment trusts; acceptance by insurance companies, and so on.

The Court: The Court will now adjourn.

(And thereupon an adjournment was taken in the above-entitled cause until Monday, March 2, 1959, at the hour of 10:00 o'clock a.m.)

[fol. 924]

Transcript of Proceedings of March 2, 1959

The Clerk: Case on trial.

The Court: May I suggest before you begin that it will be necessary to attend a Judges' meeting at twelve o'clock. Therefore, there will be no recess this morning. Proceed.

Mr. Reycraft: May it please the Court, the Government has this morning two witnesses, one Mr. Guy Hill of the Economics Section of the Antitrust Division, and the second, Dr. Irwin Friend of the Wharton School of Finance.

Dr. Friend is here, and it will be a matter of great convenience to him if we could proceed with his testimony after Mr. Hill, rather than going on with Mr. Boni, who will presumably take up this afternoon.

The Court: It there any objection?

Mr. Cox: No objection.

Mr. Reycraft: The Government calls Guy Hill.

GUY R. HILL, a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Reycraft:

Q. Will you state your full name, Mr. Hill?

A. Guy R. Hill.

Q. What is your address?

A. 4329 Verplancke, N. W., Washington, D. C.

Q. What is your present position?

A. I am an economist with the Antitrust Division of the Department of Justice.

[fol. 925] Q. How long have you been with the Department of Justice, Mr. Hill?

A. Since July, 1936.

Q. During all of that time, have you been an economist with the Antitrust Division?

A. That is right.

Q. What was your experience prior to joining the Department of Justice?

A. I worked one year for N.R.A. and had college teaching experience in the field of economics and finance for six years.

Q. Were you an instructor at New York University in Economics?

A. Starting in 1929 up to the Spring of 1932 in the School of Commerce, Economics and Finance.

Q. What are your present duties and responsibilities in the Antitrust Division, Mr. Hill?

A. From time to time I am assigned to specific litigation. Usually that is aiding in connection with the preparation of exhibits, aiding in connection with discovery, particularly in financial areas, and certain types of fact situations. There are also investigations which the department engages in which may not result in litigation, but they do occupy a good deal of time.

Q. Do you prepare reports which are submitted to Congress?

A. I have worked primarily within the last several years on reports which the Attorney General is required to submit to Congress.

Mr. Reycraft: I will ask that this document be marked Government Exhibit No. 293 for identification.

(Thereupon said document was marked Government Exhibit 293 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, I hand you Government Exhibit No. 293 [fol. 926] for identification, which is a table headed,

"Offerings of Common Stock of Industrial Corporations in Amounts of 25 million and over during the seven-year period 1951 through 1957."

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Cox: May it please the Court, I object to any examination of this witness at this time about this exhibit.

This exhibit, together with another exhibit which I assume that the witness' testimony will be directed to, were served upon us the first time this morning as we walked into the courtroom.

Under the prefrial order, as we read it, we are entitled to at least five days' notice and we have not insisted on that or been rigid in our demands.

Sometimes we have had them within the five-day period, sometimes we have had them a day or two before. But we cannot examine this witness this morning with respect to these exhibits when we have only had them in our hands about ten minutes.

I understand that Mr. Reycraft has other witnesses here: I respectfully suggest that the fair thing to do is to let the witness step down and give us at least overnight to look over these papers and we can see tomorrow morning whether we can go forward.

Mr. Reycraft: Your Honor, these exhibits were completed over the week-end. Mr. Hill will be available during the week for such cross-examination as may be necessary on the exhibits.

We would have no objection to that procedure.

[fol. 927] However, as we understand it, the pretrial order provides that where the witness is available and in court, it is not necessary to give a five-day notice, and we understand the defendants can engage in the same procedure.

The Court: Is there any objection to giving the direct testimony now, and reserving cross-examination?

Mr. Cox: I think there is, your Honor. We wouldn't even know whether to object to the questions. This thing is so strange.

The Court: He will be available throughout?

Mr. Reycraft: Yes, your Honor, throughout the trial.

The Court: Then this will be deferred until tomorrow.

Mr. Bushby: I have a further objection. This is a repeat of the old Government Exhibit 41 for identification, which your Honor has consistently refused in every form.

There are a lot of issues on which we do not have any information here. We do not have a manager. We do not know how the rights were laid off, or anything else about the issue. Your Honor has consistently ruled that the manager of the syndicate of the issue must be here under the circumstances.

Mr. Reycraft: The fact is, this exhibit contains more information than the managers have. The managers have consistently testified that once they have sold the issue, they do not know what has happened to the price except during the underwriting period.

Mr. Hill has prepared this exhibit from reliable soureds. It gives the price movement and analyzes it during the year following.

[fol. 928] Now, we are not fortunate enough to be in position to have underwriters doing our work for us, and we are fortunate enough to have Mr. Hill do it, so we think we are entitled to rely on his services.

We think objections to the exhibit should be directed to the way it is prepared, if any, but we think it is a perfectly proper way to proceed, and to ask us to rely on underwriters to do our work is very unfair, I think.

I might say also, your Honor, if I may, that the exhibits which Mr. Hill has prepared are those upon which Dr. Friend's testimony is based, and for that reason we think we should be permitted to go forward with this procedure. I think it is not at all unfair to say that Mr. Hill will be available for any examination which defendants wish to make as to these exhibits.

Mr. Cox: Will Dr. Friend be available?

Mr. Reycraft: He can be, yes, sir.

Mr. Cox: You see, your Honor, that makes it even more important that these not be put in evidence until we have had an opportunity to look them over and understand them, both for the purposes of direct and cross examination of this next witness, who Mr. Reycraft first said would only be here today.

Mr. Reycraft: That is correct. Dr. Friend has a schedule all week which makes it very inconvenient for him to stay over.

Mr. Cox: I don't see why Mr. Reycraft can't go ahead with Dr. Friend and deal with this tomorrow.

Mr. Reycraft: Well, because this exhibit is one on which Dr. Friend would rely, and to the extent there are objec-
[fol. 929] tions to this exhibit, it seems to me they could be taken up at Mr. Cox's convenience.

The Court: So far as this witness is concerned, then, his testimony will be withheld until tomorrow.

Mr. Reycraft: May I proceed with the exhibits with Dr. Friend, subject to their being admitted later on in the record? Dr. Friend is intending to rely on these exhibits for his testimony.

The Court: Is he your next witness?

Mr. Reycraft: Yes, your Honor.

Mr. Bushby: These schedules are not admissible, as your Honor has so consistently ruled.

Mr. Reycraft: I think that is not at all true, your Honor. I think Mr. Bushby has underwriters to do his analysis, and that is all very well. We are relying on Mr. Hill to do our analysis, and we think we are entitled to do it.

Mr. Bushby: I don't have any underwriters at all. You can't shift the burden of proof by putting on a schedule of figures and saying to the defendants: You go ahead and show all the details of these issues.

Mr. Reycraft: There are more details here, Mr. Bushby, than you will get from the underwriters.

Mr. Bushby: Only price details.

Mr. Reycraft: You are entitled to produce anything you like.

Mr. Cox: May it please the Court, as to the testimony of Dr. Friend, why wouldn't the reasonable thing be to go forward with his testimony and see if he can't testify from his own knowledge and recollection?

Mr. Reycraft: I object to that, your Honor.

[fol. 930] Mr. Cox: If this document has to be used to refresh his recollection, perhaps something of that kind would be done, but I don't believe this document should be admitted into evidence without a foundation being laid.

Mr. Reycraft: So far as I am concerned, Dr. Friend can proceed with his testimony on the basis of this exhibit subject to its being admitted, and I certainly would be willing to proceed on that basis.

Mr. Cox: That is a question we can hardly decide until we know what questions you ask Doctor Friend, at least as far as I am concerned.

Mr. Burnham: May we make it clear that we join with Mr. Cox.

I don't see how we can proceed with an examination of Doctor Friend about a document that was given us this morning, whether Mr. Hill does or does not talk about it.

Mr. Reycraft: The reason Mr. Hill is here is to explain the exhibit.

The Court: Why not defer the testimony of both these witnesses until tomorrow?

Mr. Reycraft: Doctor Friend has a schedule which makes it very difficult to follow that procedure.

The Court: Well, why weren't they furnished to the defendants earlier?

Mr. Reycraft: They were just finished, your Honor.

As we read your pretrial order——

The Court: That is not a good excuse.

They should have an opportunity to see them before you offer them.

[fol. 931] Mr. Reycraft: May we proceed with Doctor Friend subject to later examination of Mr. Hill as to these exhibits, and maybe use these to refresh his collection?

The Court: I don't know how far you can go. I will try it.

Mr. Reycraft: All right, Mr. Hill.

(Witness excused.)

Mr. Reycraft: The Government calls Irwin Friend.

IRWIN FRIEND, a witness called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Reycraft:

Q. Will you state your full name, please?
A. Irwin Friend.
Q. Where do you live, Mr. Friend?
A. 706 Argyle, Wynnewood, Pennsylvania.
Q. What is your present employment or business association?
A. I am Professor of Economics and Finance, University of Pennsylvania.

Mr. Reycraft: I will ask that this be marked for identification as Government's Exhibit 294, which is a document headed, Irwin Friend, listing his experience.

(Thereupon said document was marked Government Exhibit 294 for identification.)

By Mr. Reycraft:

Q. Doctor Friend, referring to Government Exhibit 294, [fol. 932] will you list your experience, please?
A. I am a Fellow of the American Statistical Association; Director of the Wharton School-Bureau of Labor Statistics study of consumer expenditures, incomes and savings financed by the Ford Foundation.

I am senior staff member, Securities Research Department, Wharton School.

I am consultant to various international U. S. Government and private organizations on saving behavior, capital markets and economic trends.

Formerly, chief of the business structure division, United States Department of Commerce, and formerly assistant director, Trading and Exchange Division, U. S. Securities and Exchange Commission.

Q. Doctor Friend, have you written in this field?
A. I have written in the field of the securities markets.
Q. What are some of the publications of which you are the author?

A. I am co-author of "Over-the-counter Securities Market," a book published by McGraw-Hill Company and financed by the Merrill Foundation.

I am co-author of a number of Government studies in related fields, specifically in the investment trust field and in the securities markets, and I have written a number of articles in professional journals on related subjects.

Q. Doctor Friend, in your opinion what are these elements which in the long run determine the market price of stocks?

A. Well, in the long run, I would say the relative prices of stocks, which would mean the prices of one stock compared to the price of another stock—would be determined [fol. 933] basically by earnings and dividends per share and by earnings and dividends per share, of course, I mean, not only current earnings and current dividends, but also anticipated dividends and anticipated earnings; plus people's assessment of the relative risk involved in the two different stocks involved.

In addition, if you are talking about the level of stock prices, as against the relative stock prices, you would have to introduce the level of interest rates.

Q. And, Doctor Friend, what are some of the short term influences on the market prices of stocks?

A. Well, there are myriad short term influences which would make for disparities from longer run and more normal prices.

One of the most important would be any temporary distortions in supply and demand conditions.

Q. And is there any way in your opinion to measure the effect on the market price of stocks of changes in the supply of stocks?

A. I am sorry, but would you repeat that question?

Q. Yes, sir.

Is there any way in your opinion to measure the effect on the market price of stocks of changes in the supply of stocks?

A. Well, there is certainly no completely adequate way I know of, but one of the most obvious, and I suspect one of the best, even if not completely satisfactory, would be to see what happened to the prices of stock on the average in the past when you had given increases in supply.

Q. And what facts are relevant in making such a study?

A. Well, clearly, since there are so many individual influences affecting any individual stock flotation—and one [fol. 934] could enumerate dozens and dozens—you would have to have as many stocks as possible to perform some consensus of judgment from.

You would have to know how the stock performed price-wise, both just before the offer, during the offer, during the new offer, and for some period thereafter, until there was some reasonable presumption that the stock had been absorbed and in reasonably permanent hands.

From this data, assuming you had enough of it, you could form some notion of what was likely to happen to a stock when you added a given percentage, let's say, to the floating supply, to the supply outstanding, by looking at what happened to its price relative to the price of stocks generally or ideally to stocks as closely like this one as possible.

Q. Dr. Friend, will you refer to Government's Exhibit 293?

Mr. Cox: Just a minute.

May it please the Court, may we have a voir dire at this point here with respect to the witness on this exhibit?

The Court: (Addressing Mr. Reycraft) What do you suggest?

Mr. Reycraft: I have no objection.

Cross-examination.

By Mr. Cox:

Q. May I ask, Professor Friend, when you first saw this document?

A. I saw it in rough shape yesterday and in typed form this morning.

Q. And is any opinion that you are about to express an opinion that you formed since you saw this document?

[fol. 935] A. I find that a little difficult to answer. It tends to confirm an opinion I held before. I would say, to put it most accurately, it reinforces the opinion I held before.

Mr. Cox: Well, may it please the Court, in that event, it is quite clear that this document is not really being used as

the basis for the Doctor's opinion. It is being used to reinforce an opinion he previously held, which means that the document is now being used because of some evidentiary value it was thought to have in itself, and since it cannot be admitted I suggest that this procedure is improper and the Doctor should be asked for his opinion, which he has beeen courteous enough to tell us he had before anyway.

He does not need the document.

Mr. Reycraft: Your Honor, this document was prepared at Dr. Friend's request, and according to his instructions, and whatever it shows it shows as a result of the standards he asked the economist to use. He certainly, it seems to me, can examine each of these issues, which he is someyhat familiar with, and testify about them.

The Witness: I am not quite sure whether this is proper, and maybe it is quite improper——

Mr. Reycraft: Go ahead.

The Witness: (Continuing) Maybe what I might say could possibly clarify the situation.

The Court: You may explain it.

The Witness: Thank you very much.

The Government came to me a few weeks ago and asked [fol. 936] whether I would be willing to testify on this question of the market impact, of various types of contemplated divestiture and before I gave them an answer I said that I would like to look at the documents that both sides had prepared, which I did.

I also said that in my opinion in good part the most relevant type of data had not been developed. I said that I had developed such data in the past, which I can refer to later, if it turns out to be proper, which indicated a certain effect on price of given increases of floating supply.

I also said, on the other hand, this gave me a fairly strong impression of the effect of additions to floating supply; I would by no means be willing to testify on this basis alone, since I had not seen any recent data.

Now, I told Mr. Reycraft that I did not know what effect the recent data would show, whether it would confirm the past experience or not, but that I would not be willing to testify without having both the recent experience as well as the older experience.

I assumed, of course, that both parties were interested in getting as complete a picture as possible of what was the effect on price of additions to floating supply.

I told Mr. Reycraft I could not tell him at that time what my net conclusion would be until I saw all of the evidence that was relevant. So I am reluctant to say anything at this stage about what the most recent experience is except on the basis of just such data.

Mr. Bushby: Well, I do not see here, your Honor, even accepting these figures, which we do not, because, as I under- [fol. 937] stand it, Mr. Friend, you have not been a member of a firm or an officer of any corporation which has marketed any of these issues, have you?

The Witness: Not at all.

Mr. Bushby: Have you ever been a member of an underwriting firm or an officer of an underwriting corporation?

The Witness: Not at all.

Mr. Bushby: Also, looking at the issues which are relevant and not looking at the new issues offered through subscription rights, it is quite a different matter.

Looking at the new issues offered to the public and secondary distributions, there is no figure in the offering there anywhere near comparable to what is proposed in the Government brief.

There is nothing here showing that in addition to the issues being offered, namely, two million shares, that they follow up here with two million shares the second, third, fourth, fifth, sixth, eighth, or tenth year; nor is there anything here about stocks being thrown on the market through distributions by the corporation going into the hands of people who have——

Mr. Reycraft: I object to Mr. Bushby making a speech here. He is not examining the witness.

The Court: Well, he is stating his objection.

Mr. Bushby: I am stating objections here as to why this whole thing is irrelevant.

Mr. Cox: May it please the Court, it seems to me if Mr. Reycraft will go ahead with the witness as to his opinion [fol. 938] and get to the point where he needs this exhibit to confirm or support it, then possibly there might be no difficulty about some use of the exhibit.

I think it would be more orderly to do it the way the witness did more or less, if we can.

Mr. Reycraft: Mr. Reporter, will you mark for identification Government's Exhibit 295, a quotation from the March, 1948 issue of the Survey of Current Business?

(Thereupon said document was marked Government Exhibit 295 for identification.)

Direct Examination:—(Continued)

Q. Dr. Friend, will you refer to Government's Exhibit 295?

Do you recognize the quotation on that page?

A. Yes, this is a quotation from an article, which I wrote in the March, 1948, Survey of Current Business, which is a publication of the U. S. Department of Commerce.

Q. Does this quotation represent an opinion which you held at that time?

A. This quotation represents a factual statement of an analysis which was completed at that time under my direction.

Q. Will you state what the result of that analysis was?

A. Perhaps the best thing for me to do is to simply read this quotation.

(Reading):

> "An analysis of six of the largest common stock offerings on the New York Stock Exchange made in the past six months indicates that fairly considerable increases in supply were accompanied by moderate price declines. [fol. 939] For these issues, which collectively amounted to about three hundred million dollars, an average increase of 20 per cent in stock outstanding was absorbed, usually in a period of two weeks, with a price decline averaging less than five per cent.
>
> "In the stock market generally there was little net movement in price during the periods from the beginning to the termination of these offerings."

In other words, for these stocks, which represented all of the large stocks in this particular period, the addition of stocks representing on the average 20 per cent of outstanding stock resulted, or to put it most accurately, was accompanied by a price decline averaging less than five

per cent at the same time that the market generally was reasonably stable.

Q. Doctor Friend, just so the record will be clear, in 1948 I assume you had no connection with the Antitrust Division?

A. I did not.

Mr. Bushby: Are you offering this exhibit or are you just having him read it into the record?

I would like to object.

Mr. Reycraft: I offer Government's Exhibit 295.

Mr. Bushby: Well, I object to it as irrelevant. I know of no common stock offerings made on the New York Stock Exchange. That isn't the way offerings are made unless they are secondaries with the permission of the Exchange.

I do not believe that this witness is talking about that. There is no similarity in the facts here. He says these six issues together aggregated collectively three hundred million dollars.

[fol. 940] There is no indication that the gross figures he is talking about have anything to do with the hundred million a year or that they offered it for ten years.

The Court: I see no need for introducing an exhibit because the Doctor has testified orally, so the objection will be sustained.

Q. Dr. Friend, in your discussions with the Antitrust Division with respect to your testimony at this stage of the proceedings, were your instructions with respect to preparing basic data similar to those which were the type of data which you used in forming this opinion?

A. Yes, with one exception. That is, I was able to trace through the new exhibit the course of prices over a longer time period than was possible in the earlier data.

Q. In which were you able to trace those prices?

A. In this exhibit which you have proposed for entering into the record.

Q. And will you repeat and add to the factors which you said are relevant in making a study of this type, both the 1948 and at the present time?

A. Well, let me repeat and perhaps expand on something that I said a little earlier.

There is, to my knowledge, no way of picking an individual stock, where you had a new offering, representing

a definite increase in the supply outstanding, and saying that this particular single experience represents what is likely to happen in the future in similar offerings of identically the same dollar magnitude or relative magnitude, etc.

The reason is, again, as I suggested earlier, that there are dozens and dozens of influences on stock prices. I [fol. 941] would suggest that the name of the underwriter is perhaps one of the less important, but it certainly is one influence.

What happened in that particular industry, that particular year, is also relevant. You cannot always hold this constant, because very frequently a company basically is the industry, so how do you compare it with a similar industry?

And, obviously, I can repeat dozens of reasons why no single case in the past is relevant to a precise determination of what is likely to happen in the future.

But I might also say that if you are not going to look at the past, in bulk, on the average, I don't see how you form any reasonable consensus of what is likely to happen in the future; and I think, at the very least, that this is one body of data which should be looked at. I don't think it is necessary—and I am obviously giving my personal opinion now—to know all the details of the underwriting.

In some of these cases, I can give the details, and in most others, as a matter of fact, I cannot; and I think this is, in good part, irrelevant. I think that if you have an average experience covering all the stocks offered over a given size in the past, this gives you by no means completely reliable evidence as to what is likely to happen in the future, but better evidence than you can get by not looking at such data.

Q. Dr. Friend, was one of the issues which you asked to be examined in the light of these criteria an issue of the Armco Steel Corporation?

A. My recollection is yes; but am I permitted to look at this exhibit for that purpose?

My recollection is yes.

[fol. 942] Q. Could you state what your examination of this issue indicates with respect to the impact on the market price of the stock of this offering?

A. I must say I am a little embarrassed.

Am I permitted to indicate what the various columns here mean? Otherwise, you will not be able to follow it from the exhibit.

Or do you prefer me to give my net impression?

Q. I would like to have you follow the column and explain the exhibit.

Mr. Cox: I have no objection to the witness using this piece of paper, in a broad sense, to refresh his recollection; and if that involves reading the column, that is all right, as far as I am concerned; but I don't think he should be asked——

I take it you can look at this and, by reading the columns, that refreshes your recollection, doesn't it?

The Witness: Yes. Let me say that my recollection doesn't go to the extent of knowing that a particular number here is accurate.

Mr. Cox: I suppose you didn't compile this exhibit, so you can't tell us whether it is accurate, I take it?

The Witness: That is right.

By Mr. Reycraft:

Q. Dr. Friend, will you examine this exhibit and give us your opinion of the impact on the market price of Armco stock of the issue which we are referring to?

[fol. 943] A. I don't like to be verbose, but let me just give an introductory statement before answering that question specifically.

I don't think that on the basis of this exhibit you can tell the impact on price of any new offering, because each case represents a sample of one, where many additional influences were undoubtedly present, which are not holding constant.

So the only thing I can say in connection with each individual company, each individual offering, is that in this particular case the price movement of this particular stock during the offering period and thereafter was such-and-so, as compared to the general market, and that this was associated with an increase in stock of given dimensions.

Q. Will you explain what that movement was?

A. For Armco, there was a 20 per cent increase in stock outstanding. And I might say, parenthetically, that I think

that the percentage increase in stock outstanding is somewhat more relevant than the absolute dollar increase in outstanding. They both have some relevancy.

But with Armco, you had a 20 per cent increase in stock outstanding; and in the first period indicated on this chart, which is three months prior to the offering, to two months prior to the offering, Armco Steel went up 3.98 per cent, as against 4.31 per cent for a stock market index, generally.

In other words, there was virtually no difference in this early period; there was no difference in the next month. Actually, Armco Steel went up very slightly more than the index. There was a difference in the month of offering—that is the third column—where Armco Steel went down 4½ per cent in price. The market, generally, went up very mildly, less than one per cent.

[fol. 944] Now, in the month following the offering, Armco Steel went down 8.7 per cent. The index went down 1.6 per cent.

For the 11 months thereafter—to fill in the whole year after the offering—Armco Steel fared definitely worse than the market; it went down well over 14 per cent, and the market generally went up eight per cent.

Now in every case, I asked where there was a decided difference between the general market index and the price behavior of an individual stock, and also in every case where there was a very large increase in stock outstanding, that the Government also tabulate—and this is done in footnotes—what happened to the industrial stock index, which is most relevant to a comparison with the company in question.

In this case it would be a steel index; and the footnote there indicates that steel stocks went down about 13½ per cent in the year following the offering, which is a little less—I should say it is more than a little less, it is at least five per cent less than Armco Steel went down.

Now I might say also in this particular case Armco Steel formed such a small portion of the steel index that this comparison is probably appropriate.

Q. Now, Dr. Friend, referring to the American Tobacco Company issue——

Mr. Bushby: Can I ask questions about Armco, so that we can keep this orderly, your Honor?

The Court: You may.

[fol. 945] Cross-examination.

By Mr. Bushby:

Q. Dr. Friend, do you know how many shares of Armco Steel were offered to stockholders in this offering?

A. How many what?

Q. Shares.

A. They were offered one share for every five.

Q. Do you know what the subscription price was?

A. Precisely, no, I do not know.

Q. You don't know what the relationship of the subscription price was to the market price of the stock?

A. I am not quite sure that I have that in my notes. I certainly don't remember.

Q. It doesn't appear from this?

A. From this statement, no.

Q. You don't know to what extent stockholders exercised their rights?

A. Again, I have this for some of these offerings; and if you want me to look this up, I will. I don't recall.

Q. But this exhibit doesn't show it?

A. It does not.

Q. It doesn't show how many rights were purchased by the underwriters?

A. No.

Q. And exercised?

A. That is correct.

Q. It doesn't show how many shares were unsubscribed and taken up with the underwriters?

A. That is right.

Mr. Bushby: That is all.

Mr. Tierney: If the Court please, I would like to join in the objection that was previously made by Mr. Cox that this exhibit that the witness is referring to has not been sufficiently identified and its authenticity, as to all the facts, established.

[fol. 946] The Court: It is not being offered at this time.

Mr. Tierney: No, your Honor, but the witness is reading

from it; and the orderly way, I would think this case would go, would be to take time out to let us look at this exhibit; then put Mr. Hill on, and if the exhibit is all right, let the witness use it. But it is unfair to the witness, it is unfair to the Court, and I think it is unfair to Counsel to proceed in this way.

If we had an opportunity to look at this exhibit, so that we could make some voir dire examinations to see how it was prepared and find out how we wanted to object to it, we could save a lot of time.

Mr. Boni is here now.

The Court: Are you going to be here tomorrow?

The Witness: I have class tomorrow. As a matter of fact, I have class today and——

The Court: Would it help if we deferred his testimony until 2:00 o'clock?

Mr. Cox: I have an alternative suggestion, which is simply this—I don't know whether it is agreeable to my co-counsel—but I have no objection to Dr. Friend taking this document and assuming the accuracy of the computations, which no doubt in time will be established, since I have great confidence in Mr. Hill's workmanship, and expressing opinions based on this tabulation.

I don't think, Mr. Reycraft, that it is necessary for you to take the doctor through each one of these and have him do what he did last time. He was doing for us what Mr. Hill will do for us, I assume; and if the doctor has a class tomorrow, I don't want to keep him here unnecessarily.
[fol. 947] So if his examination can be confined to opinions, based on this document, I am willing to let him go ahead.

Mr. Reycraft: I would like to have him express his opinion on each of these issues, and it was not our intention to let Mr. Hill examine these issues and express an opinion.

Mr. Hill's work consisted of preparing this exhibit in accordance with Dr. Friend's instructions and in checking on the staff who worked on it, and as to their accuracy and as to the validity of the figures, but as to interpretation I would rely on Dr. Friend for that.

Mr. Cox: Mr. Reycraft, you may have misunderstood my point, but I didn't understand, at least up to this point,

that Dr. Friend had expressed any opinion based on the entries with respect to the Armco Steel Corporation.

He had told us, quite accurately, what those entries show.

Now, we don't need to keep the doctor here to do that, because that appears from the exhibit; so I think we can move it along if we can get his opinions.

Mr. Reycraft: It seems to me, your Honor, that this is exactly what Dr. Friend was doing; that he was expressing his opinion as to the meaningfulness of the various changes in the price indices and the averages. As he pointed out, these numbers are not understandable without some reference to the expert knowledge that he has, and their relationship to other indices at the time.

For example, he referred to the footnote which indicates [fol. 948] the steel index decline at 13.49 per cent. This is the type of explanation which an expert would have to make.

Mr. Dallstream: Your Honor, I would like to say that I have no desire to interrupt the proceedings. It is only at the appropriate time that I want to be heard in examination of this witness on it; but I certainly would object at the moment to any possible comparison of Armco Steel Company with the eleven steel companies that are in Standard & Poor's. And I think that is true as to every one of these in which the apparent effect of the comparison with the general market is an attempt by the witness to offset the decline in price by pointing out very special situations that affect either that company or that company in comparison with a very limited number of companies.

I don't know when you expect to feel that the witness should be interrogated about these individual issues—whether you want it done now or later.

Mr. Reycraft: I think it is necessary that the witness go through each one of these issues and explain their relationship and the total overall impact before it would be appropriate to examine him on each one of them.

Mr. Dallstream: There, again, I think we are not in a position to examine the witness with regard to some of these, because we only had this about four and one-half minutes before the witness got on the stand.

The Witness: Is it appropriate for me to make a remark?

[fol. 949] The Court: Yes, you may.

The Witness: I suspect Mr. Reycraft will not be very sympathetic to my attitude in this, but I would just as soon, I think, first give you my consensus, after having looked at this yesterday, subject to the accuracy of the individual figures there, and then perhaps we can proceed from there, since there seems to be, I gather, no great objection to my doing at least that. This doesn't necessarily preclude my going through individual issues at a later stage.

Direct Examination—(Continued)

By Mr. Reycraft:

Q. All right. Will you start, then, Dr. Friend, by giving us your general opinion?

A. Now, yesterday, I prepared a couple of summary statistics which I will read into the record.

For all secondary distributions in this period which are shown on the exhibit, there was a decline in price compared to the market generally of about 4 per cent in the year following the offering, and 6 per cent for the fifteen months period as a whole, including the three months preceding the offering.

Let me say that the relevancy of the period before the offering is that most rational companies as well as most rational inside groups interested in secondary distribution will pick a period for this distribution when stock tends to be unusually high.

Associated with those two price movements relative to the market as a whole, the average increase in supply was a little over 6 per cent, 6.3 per cent.

[fol. 950] Turning next to new public offerings, the decline in price was, on the average, again compared to the market, about 3½ per cent for the year following offering.

Actually, there was an increase in price compared to the market of 5½ per cent for the entire fifteen months period shown on the chart.

Again associated with these price movements, you had an average increase in outstandings of 11 per cent.

And finally, turning to rights offerings, the decline in price in the year following the offering compared to the market was 1½ per cent. The decline for the fifteen

months period was somewhat in excess of 6 per cent compared to the market, and in this case the average increase in stock outstanding was a little over 11 per cent.

I might make two additional comments for clarification.

There is no doubt of these three groups the secondary distributions would be most relevant to any possible divestiture. New public offerings would be next in relevancy. Rights offerings, though I think still relevant, are least relevant of the three.

Q. Doctor Friend, will you now refer to the American Tobacco issue and state what your opinion is with respect to the impact of that offering?

A. Again I want to say that I have no opinion on what was the net effect of the American Tobacco offering on the price of American Tobacco. What the chart shows is that associated with this 20 per cent rights offering, the stock price, let's say, in the year following the offering went up some 18 per cent.

The index went up only four per cent. This is the stand- [fol. 951] ard statistical and industrial index. In other words, the general market index.

But, on the other hand, if you look at what happened to tobacco prices, you will find tobacco stocks generally increased somewhat more in price than did American Tobacco in this period.

Q. Will you refer to the American Can issue and relate, if you can, the movement of the price of the stock to the volume of the offering of that stock in 1952?

A. Well, in this case the stock price seemed to behave better than the general market in spite of the ten per cent offering, but this could completely have been due to special influences characterizing American Can.

Q. Now, will you express your opinion with respect to the Socony-Vacuum issue?

A. Well, in the case of Socony-Vacuum you have another ten per cent offering where the price of the stock fared somewhat worse than the general market did.

Q. Approximately how much worse, would you say?

A. It depends on the period you take. If you take the year following the offering, the difference is infinitesimal.

If you include the offering month, the difference will get to be well over a five per cent difference.

Q. Will you refer to the Aluminium issue in April of 1953, and evaluate that issue?

A. Well, in the case of Aluminium you had a ten per cent offering in 1953, associated with a 25 per cent increase in the price in the year following the offering—15 per cent, if you put in the month of offering—compared to a little worse behavior in the stock market as a whole.

But if my recollection is correct, aluminum stocks in 1953 generally behaved significantly better than the mar- [fol. 952] ket, so that this performance of Aluminium would represent somewhat worse performance than the market in aluminum stocks.

Q. Will you refer to the Aluminium issue in 1955 and evaluate that issue?

A. This is almost a complete counterpart of what I said in 1953 for they are both ten per cent offerings. In this case again, the stock in question did better than the general market, but I am quite certain it did worse than other aluminum stocks.

Q. Now, referring to the General Motors rights issue in February, 1955, what is your evaluation of the movement of the price of that stock?

A. In this case you have a five per cent offering, which was associated with a very sizeable increase in price in the year following offering, after moderate decline in the month of offering.

The increase in price of General Motors stock in this year following offering is significantly higher than the increase in general stock prices, and since automobile stocks didn't behave particularly well this year, as a matter of fact automobile stocks other than General Motors undoubtedly behaved worse than the market in this particular year, this performance by General Motors certainly represents a better price performance than the price performance of other automobile stocks in that particular period.

Q. Now, will you refer to the Goodyear issue and express your opinion with respect to that issue?

A. Again, you have an instance of a 10 per cent increase in outstanding associated with a price behavior which was worse than the general market in the month of offering, definitely better in the year following offering, but I have

[fol. 953] no recollection of the situation for comparable stocks in that particular period.

Q. Will you refer to the Sperry Rand issue and express your opinion on that?

A. In this case, you have a 10 per cent offering associated with a price performance which is very close to the market generally.

Q. And in the case of North American?

A. In the case of North American, you have a 16⅔ per cent offering, which was associated with a price performance much worse than the general market.

I see there is a footnote which indicates that the price performance of North American Aviation was worse than the average performance of aircraft manufacturers generally, though not by as much as indicated by the comparison with stock market prices generally.

Q. Will you refer to the Johns Manville issue, and express your opinion with respect to that issue?

A. Again, you have a 10 per cent offering where the performance of the stock was definitely worse than the market generally. By definitely, I mean at least in the five to ten per cent dimension.

Q. Referring to the Armco issue of January 10, 1957, what conclusions do you draw from this price movement?

A. In this case, the performance of Armco was again worse than the performance of the market generally.

Q. Referring to the Socony Mobil issue of January, 1957, what conclusions do you draw?

A. Here the performance was very close to the general market performance. This was a 10 per cent offering and rather bigger than some of these others we have been talking about.

[fol. 954] I might add that you do have here a large number of 10 per cent rights offerings, so that there is some sense perhaps to an average for these ten, the average behavior of the 10 per cent rights offerings where you have many fewer example for the smaller offerings and the larger offerings.

Q. Will you refer to the Anaconda issue and express your opinion with respect to the movement of the price of that stock?

A. In this case, Anaconda behaved much worse than the

market generally. This was a 20 per cent offering. It behaved somewhat worse than the copper stocks in general.

Q. Now referring to the Anaconda issue, when did this behavior of price of the stock first become apparent?

A. Well, actually it was behaving worse even as early as three months before the offering.

I don't recall how much before it was.

Q. Referring to the IBM offering in 1957, what conclusion did you draw from this series?

A. This stock clearly behaved better than the market generally.

This was associated with ten per cent increase in outstanding. Again, I have no industry comparison or do I know of any industry comparison that would be relevant.

Q. Will you refer to the Minneapolis Honeywell Regulator issue, and express your opinion as to that?

A. Here you had a market performance of the stock in question somewhat worse than the market generally.

It was significantly better in the month of offering; significantly worse in the year following.

Q. Will you refer to the Standard Oil issue of Novem-
[fol. 955] ber 1957?

A. This is the smallest relative offering, although it is one of the two largest in dollar amount. In this case the stock behaved definitely worse than the market.

Q. What significance, Doctor Friend, do you attribute to the performance of any single one of these issues?

A. Very little.

Q. What do you think is required to make these comparisons meaningful?

A. I think aggregation, and the more issues, of course, you have in your aggregate, the more reliable is the inference you are likely to draw.

Q. Do you think that the average figure that you have derived is the most meaningful?

A. I would say it is most meaningful, though really it would apply on the average, to a ten per cent increase in stock offering.

There is a suggestion that associated with a 20 per cent increase in stock, you get higher effects on the market.

It is true, you only have three offerings at the 20 per cent level and one ten, between 10 and 20 per cent, so your

conclusions are rather tenuous, but there is a definite suggestion in these data that a 20 per cent increase in stock has a perceptibly higher or larger impact on the market than the ten per cenf increase.

So that I would say the average figures at the bottom of this set of new issues offered through subscription prices, the high, low and average, applies for the most part to the ten per cent increase in stock offering, although if you were to confine your attention to those alone, it looks as though the average changes would be rather smaller.

Q. Are you able to draw any inference with respect to an issue of less than 5 per cent?

A. No.

Q. Referring to the American Telephone & Telegraph [fol. 956] issue of September 14, 1956, what conclusions do you draw?

A. Well, in this particular case the stock behaved basically like the market.

It was slightly worse in the month of offering. Definitely, or I should say somewhat better—I guess definitely better in the year following.

Q. With respect to new issues offered to the public, would you refer to the Jones & Laughlin issue, and express your opinion with respect to that issue?

A. Here you had a rather large new issue offered to the public. In relative terms it is the largest. In absolute dollar terms, it is not so large.

The price behavior for the period as a whole is not too different from the market, but it is definitely worse than the market for the month of offering and the year following.

If you turn to the footnote, it looks as though it would—let's see, this is Footnote 5—it would not be terribly different from the experience of steel stocks generally.

Q. Now, will you refer to the Monsanto issue, and evaluate the movement in the price of that stock?

A. Here you have an 8 per cent increase in supply outstanding, associated with a somewhat worse experience than the market generally in the month of offering and the period thereafter, though an appreciably better experience in the period to the offering.

Q. How much worse in the month of offering, Dr. Friend?

A. In the month of offering, it is roughly 3½ per cent worse.

Q. Now referring to the Caterpillar Tractor issue, will you express your opinion on the price movement of that [fol. 957] stock?

A. That behaved definitely better than the market, both before and particularly following the offer.

Q. And approximately how much better did it behave than the market?

A. In which period?

Q. Year-end.

A. For the year following the offering, about 30 per cent, but again I suspect that this reflects industry factors.

Q. Referring to the Halliburton Oil Well issue, will you express your opinion as to that issue?

A. Here you had a 10 per cent increase in supply, associated with a price experience which was definitely better prior to the offering, not too much different in the month of offering, and definitely worse in the year following.

Q. Now, will you next refer to secondary distributions? Will you explain the difference between a new issue and a secondary distribution?

A. A new issue refers to stock which had not previously been outstanding, and stock which is issued by the corporation itself.

A secondary distribution refers to stock which has previously been outstanding, and typically will be issued by some corporate insider or by some large stockholder in that corporation.

Q. Now, referring to the Aluminium Limited issue in February 1951, what conclusion did you draw?

A. In this case you had a 9 per cent increase in outstanding, associated with an experience which is definitely better than the market up to the offering, worse than the market in the month of offering, and very much better than the market in the period following.

Q. Now, referring to the International Harvester issue, [fol. 958] what conclusions do you draw?

A. Associated with a 7½ per cent increase in the outstanding, you have a market experience which is worse than the market through the month of offering, and definitely worse than the market in the year following.

Q. Now, will you refer to the Republic Steel offering and express your opinion?

A. Here you have roughly a six per cent increase in outstanding associated with a rather better—I should say definitely better market behavior through the month of offering; a worse than average market behavior in the year following.

Q. Will you refer to the Corning Glass issue?

A. Associated with a seven per cent increase in stock outstanding, you had not too different a behavior through the month of offering, and not too different a behavior the year following.

Q. And will you refer to the General Motors secondary in April of 1956?

A. Associated with a secondary which was very small in relative terms, you had a market behavior which was not terribly different from the market up to the month of offering. It was slightly worse. It was definitely worse in the month of offering. It was somewhat better in the year following.

Q. Now, will you refer to the Rohm & Haas issue, and express your opinion with respect to the movement of that stock?

A. Associated with a 7.8 per cent increase in the outstanding stock, you had a behavior, price behavior in that stock which was somewhat better than the general market up to the month of offering, worse in the month of offering, and worse also in the year following.

Q. And how much was that, Doctor Friend?

[fol. 959] A. In the year following it would be at least—well, it would be just about ten per cent worse.

Q. Now, will you refer to the issue of The Texas Company in June of 1956 and evaluate that?

A. It was an extremely small offering in relative terms. This was associated with a price experience through the offering month not significantly different from the market, better than the market generally for the year following, but again—I must say the footnote seems to be in the wrong place.

Q. It is Texas Gulf Sulphur.

A. Texas Gulf Sulphur, yes.

Q. Will you refer to the Texas Gulf Sulphur issue and explain that one?

A. Here you had roughly a 12 per cent increase in outstanding stock as a result of this secondary.

A movement in stock prices in the offering month significantly worse than the market, and in this case I mean something on the order of 8½ per cent, and significantly worse than the market generally in the year following, but it seems entirely attributable or virtually entirely attributable to the behavior of sulphur stock.

Q. And what overall conclusion do you draw from these secondary distributions, Doctor Friend, with respect to the impact of volume on price?

A. Well, I would say that on the average it appeared that in this period you were able to increase the outstanding stock by something on the order of 6 per cent, with an effect on price, a depressant effect on price which might be of the order of 6 per cent.

Q. Now, Doctor Friend, we have referred to rights offerings.

[fol. 960] Will you express your opinion as to the significance of the discount which is generally offered to stockholders in connection with a rights offering?

A. Well, in connection with a rights offering you typically—or corporations typically sell their stock at a very sizeable discount from the price in the market generally.

Q. And what relationship in your opinion does this bear to the price which the corporation could obtain for this issue?

A. Well, it is clearly, in my opinion, much lower than the price that corporations could obtain, and I say this for a couple of different reasons.

First of all, corporations selling stock to stockholders can be rather liberal. There is no reason why they should not be quite liberal in the price at which they sell the stock; they are selling additional stock to the owners of the corporation.

So there is no reason in the world not to put the price down quite significantly from the price at which the stock could be sold in the market.

Second of all, in a rather high proportion of rights offerings, you do find that the stockholders do not want

to take down the stock. They do not necessarily lose anything by not taking down the stock because, of course, they get the value of the right, and the discounted value of the price offered to stockholders plus the value of the relevant rights is in the market pretty close to the market price generally.

Now, frequently you find that stockholders prefer to get the value of their rights rather than to exercise them, and the underwriters then, of course,—assuming this is an [fol. 961] underwritten issue, but frequently they do this even on the best efforts issue—will then sell the stock in the open market.

This price is, of course, always—I should not say always—in virtually every case, is extremely close to the market price, not to the discounted price to the stockholders. You may have, say, some three or four stock market commissions differential between the market price and the price of this offering to the public as against the offering to the stockholders.

Q. Does the rights offering have the effect of diluting the shareholder's equity?

A. To a moderate extent, yes.

The direction of the effect is clear, but I think the extent is usually not very large. Let me indicate the general principle.

If your stock were selling at $100 and you had a million shares outstanding, and if you were going to sell another million shares at $50 to stockholders, assuming that you expected the earnings per dollar to be the same on the new and the old stock, the logical price would be $75.

However, in this case I have assumed the 50 per cent offering, you see, and the 50 per cent deduction from the market price.

Typically the comparable type of dilution in these rights offerings would be of the magnitude of a couple per cent.

Q. Now, in your judgment does the lag between the raising of the capital and the employment of the capital have any bearing on the market price of the stock after the rights offering?

A. It is generally considered, and I think most people on the street believe, when you float a big new issue the [fol. 962] market takes into consideration that the capital

into which you are going to put these funds won't be productive for a while, and that, therefore, they will discount the earning power of these new assets.

Actually, I am far from sure that this is true or that this is a significant factor in a price determination.

Q. Do you think at least psychologically this is a significant factor in the market?

A. I just do not know.

Q. Does the setting of the subscription price in rights offerings below the market, in your opinion, have a tendency to depress the market price?

A. Theoretically the only reason it should have is to the extent of this first, this 2 or so per cent dilution factor, whatever it happens to be, theoretical dilution factor, and, second of all, the temporary or short term effect and imbalance short term supply and demand situation.

In the very long run I think this would not be a factor.

Q. Is the short term dilution effect or the dilution effect present in the secondary distribution?

A. The type of dilution I describe in connection with rights offerings clearly would not be. There would be no dilution effect in the usual sense of the term.

Q. Do you have any general conclusions with respect to the relationship between price and volume generally in the market? You have testified to some extent, but would you be able to generalize?

A. I think that there is no theoretical reason why there should be any significant correlation between volume and price per se. In many types of situations, you would have urgent buying pressures and, therefore, volume would be associated with increases in price.

In other situations I can think of, you have urgent sell- [fol. 963] ing pressures and, therefore, volume would be associated with decrease in price, and I see no reason theoretically why there should be any net positive or negative correlation, and what little data I have seen in the past on this does not seem to suggest any major correlation between the two.

Q. In your opinion, are such short-term imbalances as occur in the price of a stock as the result of a change in the supply permanent?

A. Well, it can exist for a considerable length of time. I would expect that at some indefinite time in the future, depending upon the circumstances of the particular issue, that this would disappear.

Q. Does it depend to any extent, in your opinion, on the quality of the stock being offered for sale?

A. I would say that quality would be one of many factors which would condition the effect of a given change in an outstanding supply on the price of the stock involved.

Q. Dr. Friend, do stocks in particular industries have characteristics which distinguish them from stocks of other industries?

A. Yes.

Q. Is there, nevertheless, a substantial amount of cross elasticity of demand among them?

A. Yes. I would say that investors, typically, have in mind—or at least a high proportion of investors—some kind of balanced portfolio, so that to some extent they would be looking for stocks in a particular industry; but that to a much greater extent, the relative investments in different industries would be conditioned by the relative earnings, dividends, and relative risks.

Q. Would you explain, in a general way, your understanding of the term "cross elasticity of demand"?

A. Well, if you have two stocks or two commodities, "A" [fol. 964] and "B," and each increases in price, the relative price of "A" would presumably be associated with the decrease in the relative demand for "A," so that the price of "B," as well as the price of "A," is relevant in assessing the potential demand for "A."

Q. Now, Dr. Friend, have you made any study or, in your experience, are you familiar with the investment patterns of institutional investors?

A. In a general sense. I have made some statistical studies. I have never—I shouldn't say that—I have only occasionally been involved in this way with individual institutions.

Q. Referring to articles that you have published, Dr. Friend, do you recall the conclusions which you drew at the time with respect to changes in demand potential of institutional investors?

Mr. Tierney: If the Court please, I object to this—what conclusions he may have drawn at some other time, which may be interesting; but what is important here is "What is his opinion today?".

By Mr. Reycraft:

Q. Will you express your opinion today in the light of what your conclusions were in the past?

I assume that you have expressed opinions in the past.

Mr. Tierney: I object to that, your Honor.

The Court: Sustained. Confine it to the present.

By Mr. Reycraft:

Q. Will you express your present opinion of the validity of the conclusions which you drew in the past with respect to the——

A. I am afraid I got lost somewhere along the line.

[fol. 965] This has to do, as I recall——

Mr. Tierney: I object to that, your Honor.

The Court: Sustained.

By Mr. Reycraft:

Q. Dr. Friend, are there substantial markets for debt and equity securities, in your opinion?

A. Yes.

Mr. Bushby: Will the Reporter read that question, please?

(Question read.)

Mr. Bushby: I don't understand the question.

By Mr. Reycraft:

Q. Do you understand the question?

A. As I understand it, yes; I think I would say yes.

Q. Will you explain that a little bit for the record, please?

A. That every year you have something like 30-odd billion dollars, I guess,—at present prices, it would be rather higher—purchased and sold on the New York Stock Exchange. This would represent about 85 per cent total on all Exchanges; it would represent about three-quarters

of public transactions in all stocks, including over-the-counter, as well as Exchange stocks. Every year you also have new issues, new stock issues, amounting to well over 2 billion dollars; and these are of course very large amounts in most contexts.

Now so far as the bond markets are concerned, the quantities of trading are—I was going to say "infinitely greater"—much, much greater than the quantities of dollar trading in the stock market.

Q. Have you observed any shift in purchasing by institutional investors from bonds to common stocks?

A. There has been a very definite shift of institutional [fol. 966] investors towards equity investment and particularly towards common stocks.

Q. Now you have referred to "over-the-counter" transactions. Will you explain what you mean by that phrase?

A. Different people mean different things by "over-the-counter" transactions. What I mean, and what I think most people mean, is any transaction—in this case "securities"—which takes place off an exchange.

Q. What type of investor have you observed engages in this type of transaction?

A. It depends on the type of security and the volume of the transaction. You really have two extremes here; you have small, rather speculative stocks, traded to a much greater extent in the over-the-counter markets than you have on the exchanges.

This appeals typically to individuals and very frequently to small individual investors.

At the other extreme, you have large blocks which institutions engage in, and these are typically in the highest quality exchange stock or highest quality non-exchange stock.

They are very high quality stock.

Q. What, in your opinion are the reasons that institutional investors engage in over-the-counter transactions?

A. I think the most important reason—at least this is what generally seems to come out of either questionnaire surveys or personal surveys of institutions—is their desire to consummate a given volume of transactions, either on the purchase or sales side, but much more commonly on the purchase side, without affecting the price unduly.

On the exchanges you tend to have, well, just say for brevity, they constitute rather thin markets, for many [fol. 967] purposes. In other words, in some institutions which have tried to dispose of a couple of million dollars of securities on even the New York exchange in a very short time—let us say, today—this might have a rather sizeable impact on price; but if they engage in over-the-counter transactions, it takes several different forms.

They may be able to do this with much less impact on price.

As I say, most of this occurs on the purchase side rather than on the sales side, simply because institutions have been basically purchasers rather than sellers in recent years.

Q. Are there advantages to the institutions with respect to commissions?

A. There can be.

As I said, I think the single most important reason is the one I adduced--that institutions also give, usually as a secondary reason, the fact that they are, under some circumstances—it is not necessarily true on the average—able to do better price-wise—"price-wise" now meaning minimizing commissions—by engaging in over-the-counter transactions as against engaging in exchange transactions.

Q. You referred to the fact that there are a number of forms which over-the-counter transactions may take. Would you explain that answer?

A. Well, one type of over-the-counter transaction does not necessarily involve exchange firms at all; it doesn't involve any of the specialized forms which the exchange has set up for dealing in exchange stocks by exchange firms, off the floor of the Exchange.

The differences are not terribly important, really. It is just a question of whether it goes through one of the forms that the New York Stock Exchange, in particular, has set up in postwar years to permit their members to engage [fol. 968] in these large block transactions, or goes through a typical over-the-counter firm.

Q. What is the importance of the over-the-counter market for corporate bonds?

A. Well, the over-the-counter market accounts for virtually all the transactions in corporate bonds.

Q. And would you be able to ascribe any reason for that fact?

A. To give a complete explanation of this would require more time than it is worth.

Basically, exchange——

Mr. Tierney: I object to the witness giving a complete explanation of what happens to the over-the-counter bond market, because he had been interested in that——

Mr. Reycraft: He has indicated that he is not going to give a complete explanation.

The Court: Give it in a general way.

By the Witness:

A. Basically, the types of securities which most analysts would regard as best handled on the Exchange are those which have a reasonable amount of speculative interest.

When you have a type of security which gets completely enmired—maybe that is not the right word—in an investment portfolio, this is much less susceptible to Exchange trading and, of course, bond trading is not a—well, except for some bond dealers—but for a high proportion of holders, is not a speculative type of trading.

In addition, bond trading is basically institutional trading, as against being individual trading.

As I indicated earlier, institutions to a much greater extent than individuals, have an affinity for the over-the-counter market.

Q. Do you have any opinion, Dr. Friend, as to the trends and availability of new corporate equities available [fol. 969] for purchase, as compared with earlier periods of time?

A. Well, I can say first that for a number of years now, with the exception of 1958, which was relatively low, new corporate stock offerings, apart from mutual funds, which are a class apart, had been averaging about two billion dollars a year. This is quite low in historical prospective, if you take a look at the late Twenties. It compares favorably in dollar volume with what happened in the mid-Twenties; but, actually, it would be exceedingly low on any relative basis, compared to the gross national product income in the usual economic picture.

Q. Are you familiar with the testimony in this case, Doctor Friend, concerning the purchase by General Motors of its own stock on the New York Stock Exchange?

A. In a general way, yes.

Q. In your opinion, do purchases in this amount have any effect on the market price of that stock?

A. They do have some effect, yes.

Q. Would you be able to give an estimate as to the degree of the effect?

A. No. I would say that purchases of this magnitude would reasonably be expected to have a rather modest stimulating effect.

Q. Would you be able to compare in any way the market effect of the sale of a comparable amount of stock?

A. In the average market I would see no reason why X dollars of sales should have any more effect on the down side, or any less effect, than X dollars of purchases on the up side.

Clearly, in a weak market X dollars of sales would have a greater effect than X dollars of purchases. In a strong market, I would expect the purchases to get the nod.

Q. In your opinion then, if the purchases and sales in this amount were equal, they would cancel each other out [fol. 970] on the market?

A. If there were no other developments in a particular stock, the only thing you would have was the—well, what I guess an economist would call "new autonomous purchases of X dollars" and "new autonomous sales of X dollars"—I would see no change in the market in the way of these offset purchases or sales.

Q. Are you familiar with the proposal that practically 20 million shares of General Motors stock be sold over a ten-year period?

A. Again, in a general way.

Q. Based on the studies that you have made and your background, within what range would you estimate that any resulting price movement would fall from such a transaction or a series of transactions?

Mr. Bushby: I object, unless all the factors are stated in this hypothetical question that relate to this proposed Government decree; that is, the distribution for the same

ten-year period of another four million shares, and that the people are going to be taxed.

I think that all must come into the question.

Mr. Reycraft: Mr. Bushby will be able to cross examine, your Honor. I am giving him a hypothetical question with respect to the sale of 20 million shares of stock.

The Court: Overruled.

Mr. Cox: Within what period of time?

Mr. Reycraft: Ten years, Mr. Cox.

By the Witness:

A. The sale of 20 million shares in ten years would represent, I gather, something under less than 8 per cent [fol. 971] of outstanding stock. I would not have any strong degree of confidence in any particular percentage effect that is likely to ensue; but I would certainly place some considerable degree of reliance on the average behavior in the past. The average behavior in the past is admittedly not identical with the situation you are raising, but I think it does have considerable relevance.

Now in the past you have had, on the average, a 5 per cent increase in outstanding supply—whether this takes the form of a secondary or a new public offering, or a rights offering—associated with a decline in price, at, I would say, roughly 5 per cent.

We have much less evidence on anything above a 10 per cent increase in supply; but there is some suggestion that the 20 per cent increase in stock outstanding has been in the past associated with price declines in the market of between 10 and 15 per cent.

By Mr. Reycraft:

Q. This is 20 per cent within what period, Dr. Friend?

A. All these estimates refer to offerings within very short periods of time; the most would be a couple of months.

Q. That does not refer to a 10-year period, is that correct?

A. It does not refer to a 10-year period.

Q. Now, in your judgment, what factors would be most likely to minimize any impact on price of the sale of stock in this volume?

A. I am not quite sure whether you are holding this assumption constant, but the less stock sold, the less the impact on price.

Now for a given amount of stock sold relative to the amount outstanding, I would say the nature of the markets in which this stock is sold would be highly relevant to the effect of a given increase in supply.

[fol. 972] In connection with the particular hypothetical question that you are raising, I suppose a maximum flexibility given the underwriters involved should reasonably be expected to hold down price effect.

Q. What type of flexibility do you refer to, sir?

A. Really, it was related to the first point I made,—in good part, permitting them to pick the market in which they sold the stock; but also permitting them to use the type of offering, the terms of offering, etc., that would seem to them most appropriate.

Q. In your judgment, would this be best done by a fixed series of secondaries or by varying the terms?

A. What was that last?

Q. By varying the quantities.

A. I would have no fixed opinion, certainly no very useful opinion on the best procedure to follow.

Q. Would you have to relate any such opinion to the market at the time?

A. Yes. I said that clearly you would want to give flexibility to the underwriters in any plan that you had, and they would, in turn, relate this to market conditions.

But what I meant was that if the underwriters were to recommend that certain fixed amounts be sold at certain periods, this would be perhaps as good as any other approach.

The Court: The Court will now recess.

(Thereupon a recess was taken in the above-entitled case until 2:00 o'clock p.m. of the same day, Monday, March 2, 1959.)

[fol. 973] Before Hon. Walter J. LaBuy, Monday, March 2, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to adjournment.

Present: Same as before.

The Clerk: Case on trial.

The Court: Proceed, please.

Mr. Tierney: If the Court please, I should like to make a suggestion, if I am in order, and Mr. Reycraft has willingly acceded to it.

Obviously from the examination of Mr. Boni the other day, the Government didn't understand the import of our objections as to the use of memoranda to refresh the recollection.

I have prepared a short memorandum for them, one copy of which I will hand to the Court, so that when Mr. Boni comes on again, the Government and we will all understand what it is.

Mr. Reycraft: We would like an opportunity to reply, your Honor.

Mr. Tierney: Oh, yes. This is no argument. I just want to give it to you in advance.

Mr. Reycraft: Dr. Friend, will you resume the stand?

Irwin Friend, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

[fol. 974] Direct Examination:—(Continued)

By Mr. Reycraft:

Q. Dr. Friend, referring to your testimony this morning, Page 1658 of the transcript indicates that you stated that in the past, on the average, a five per cent increase in outstanding supply is associated with a decline in price at, roughly, five per cent.

Would you care to make any observation as to that statement?

A. If I said that, I am sorry. I misspoke.

The data suggests——

The Court: Speak louder, please.

By the Witness:

A. (Continuing) I am sorry. If I said that, I misspoke. The data suggests that a 10 per cent increase in outstanding supply has in the past, and particularly over this period 1951 to 1957 covered by the statistics I was referring to, been associated with a decline in price of something in the neighborhood of five per cent compared to the market in general.

Q. Dr. Friend, do you have an opinion with respect to the price movement which might be anticipated from a sale of two million shares of General Motors in a single year?

Mr. Cowen: Your Honor, shouldn't that be qualified by making it a precise determination of the circumstances under which these shares would be offered under the Government plan?

This is a general question. Why don't we relate it [fol. 975] to the circumstances of the plan, and then see what his answer may be?

Mr. Reycraft: I would like to have the witness's statement of this hypothetical question. I think there are a number of variants as to how this might be accomplished, and the witness is here to aid the Court in determining the right procedure.

Mr. Bushby: You said the sale of two million shares. There are seven million sold on the Stock Exchange every year by somebody. Who is he talking about? The question isn't understandable.

Mr. Tierney: If the Court please, it is my opinion that the rule of evidence is that when you examine a witness on direct examination, it is incumbent upon you to include in that question all of the assumptions that are available.

It is a little different on cross-examination, but this witness is being examined on direct, and if he is going to give any assumptions, he had better give them all.

I object to it in that form.

By Mr. Reycraft:

Q. Dr. Friend, will you base your answer on the assumption that there is a single sale of two million shares of General Motors in a particular year which is in addition

to the volume of trading on the Exchanges at the present time?

Mr. Cowen: Your Honor, that is not correct. He forgot the overhang of the stock over a period of ten years. I think the witness ought to be told about that, too.

Mr. Reycraft: You can bring that out.

[fol. 976] Mr. Cowen: I think that is a proper assumption based on what the plan is.

The Court: You may answer.

By The Witness:

A. Let me state, first of all, that it is, in my opinion, impossible to state what will happen in any particular situation without knowing in advance a lot more data than are assumed under any set of assumptions one might make beforehand.

It depends on the state of the markets. It depends, speaking not completely facetiously, on what people have for breakfast the day of the offering, and so forth.

But the burden of the evidence I was discussing this morning suggests that in the past, on the average, when you have added something on the order of magnitude of, let's say, close to 10 per cent to outstanding stock, and I suppose two million shares a year for ten years would be something a little less than 10 per cent in total, that you have had a downward pressure on prices of the stock involved of something in the rough order of magnitude of 5 per cent relative to stock movements.

Q. Doctor Friend, have you read any of the briefs in this case?

A. Generally, yes. I did not go over them very carefully, but I read them for background information.

Q. Are you aware of the opinion which has been expressed that the Government's proposal would result in a decline of price in General Motors stock of 25 to 40 per cent on the market?

Mr. Cox: I object, your Honor. I concede the witness' [fol. 977] qualifications, but Mr. Reycraft, I think, must be referring now to an argument in a brief, but it doesn't seem to me this witness is qualified or should be imposed upon by asking him to discuss arguments.

When we present evidence about a market impact, it might be appropriate then for Mr. Reycraft to call the witness back and have him testify about what our witnesses said but we haven't——

The Court: The objection is sustained.

By Mr. Reycraft:

Q. Dr. Friend, have you made any studies of the shifts by institutional investors to common stocks?

A. Yes.

Q. What have those studies indicated?

A. Well, I made a series of such studies, some in connection with my work at the university, some in connection with articles, including a couple of articles in Fortune magazine.

These have shown that starting with a rather small amount of equity investment—and by equity investment I am referring to common stock investment—in 1949, the amount grew very rapidly until currently the rate of annual investment by so-called institutional investors would be something on the order of magnitude of two and a half billion dollars a year.

Moreover, and this may be relevant——

The Court: Did you say billion or million?

The Witness: Two and a half billion dollars a year.

In addition, though I have not carried on this study in the past two years, I did a couple of years ago as well as several years before that send questionnaires to a large sample of institutions asking what their long run plans were in terms of equity investment.

[fol. 978] In both cases they indicated a desire to have a higher proportion of their total portfolio in equities in the long run than they had at that time, and as a matter of fact a higher proportion, I think, than they still have at present.

The Court: Pardon me. Who was that communication directed to?

The Witness: To a random sample of financial institutions, pension funds—this type of institution.

The Court: By numbers, about how many?

The Witness: Well, I have to rely on my recollection, which is not likely to be too far off.

. I think we covered about 50 per cent of the assets of pension funds, maybe a little less than that, and only 10 per cent for bank administered personal trusts, with the other financial institutions falling between the two proportions.

By Mr. Reycraft:

Q. For what purpose was that survey conducted, Dr. Friend?

A. Just basically to find out what were likely to be the important influences in the market in the foreseeable future.

Q. That was for Fortune magazine?

A. Well, it happened to fall both within my own research interests and the interests of Fortune magazine, yes.

Mr. Reycraft: I have no further questions.

Mr. Cox: May it please the Court, I am going to go as far as I can this afternoon in cross examination of Professor Friend.

We found over the noon hour that the chart, which is [fol. 979] apparently quite important in the Professor's testimony, is quite complicated in some respects and not altogether easy to understand.

It may be that I or other counsel will feel the necessity of asking that Professor Friend, at some time convenient to him, return, so that we may complete this cross examination after we have had a chance to examine the chart. I am not sure that this will be the case.

Cross-examination.

By Mr. Cox:

Q. Professor Friend, at the beginning or toward the beginning of your direct examination——

The Court: Will you please keep your voice up.

Mr. Cox: Yes, your Honor.

By Mr. Cox:

Q. (Continuing) I understood you to testify that in the long run the prices of common stocks are determined by the dividends paid on stocks and by the earnings of the company whose stocks are in question. Is that right?

A. That the relative prices of one stock compared with another would be determined by the relative earnings and dividends, not only those currently achieved but those in prospect, plus some risk differential, differentiating between the two firms in terms of the inherent riskiness that this average expected rate of return would not be achieved.

Q. What do you mean by risk element?

A. Well, if you had two stocks with both of them, let us say, associated with an anticipated return of five per cent—I do not think it is necessary for this purpose to differentiate between earnings and dividends.

[fol. 980] Let's say that in one case the five per cent average return was associated with a degree of indeterminancy on both sides. The average return you expected is five per cent. It might be zero, it might be ten per cent.

The other case, let us take a utility, you had a very high order of confidence on this five per cent return; you would typically be willing to pay a higher price for the second situation.

Q. Is it in the cyclical industries that you are more likely to get an element of risk of that kind?

A. In cyclical industries there is a big difference in this respect between the current situation and the past, that there still would be a greater risk attached to it.

Q. Now, can you explain to me the mechanism in the market through which these past, present and prospective earnings on dividends and the risks affect such stock prices?

A. People buy and sell stock. They make a determination of what the stock is worth and you get what an economist would call some sort of a demand schedule, which you can never see, and you get other people willing to supply it at given prices, and where these two things intersect is where price is determined, at the margin.

The only thing you can observe would be the intersection points of the supply and demand curve.

Q. I see. So these elements, which are the ultimate determinants in the long run operate in the market through variations in supply and demand, is that what you are telling me?

[fol. 981] A. Yes. They are in effect a reflection of the supply and demand schedule. You can have—this would rarely occur in practice, but in theory at least you can have

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[fol. 981] A. Yes. They are in effect a reflection of the supply and demand schedule. You can have—this would rarely occur in practice, but in theory at least you can have

the same price being maintained for a long period of time, if none of the underlying factors were changed, even though you had two different schedules involved, supply schedules and demand schedules.

I am not quite sure if I am answering your question, but I am trying.

Q. I think you are, but could I ask you this question: Could you also say that the supply and demand reflect the appraisal that the investors make of these factors of prices and earnings or dividends, earnings, past prospective and future and the element of risk?

A. I agree with you, yes.

Q. That is a correct statement?

A. Yes.

Q. I recall that you also said on your direct examination that in the short run prices of stocks might be affected by distortions in supply and demand. Is my recollection right on that point?

A. That is right.

Q. Am I to understand from that that in your judgment distortions in supply and demand can never affect stock prices in the long run?

A. This may get to be a point in semanties, which I am sure we both want to avoid——

Q. That is right.

A. I think I said not only distortion but what I termed a temporary imbalance. Let's assume you had an equilibrium position reached in some particular stock and nothing much happens for a considerable length of time so that the price remains reasonably stable.

Now, nothing might happen to the underlying economic factors,—relative profitability, etc., but, if all of a sudden a large amount of stock is supplied, in other words, thrown upon or added to the existing supply, or a large amount [fol. 982] is demanded, then until this temporary imbalance were erased this would affect the price of stock in the obvious direction.

Q. Now, I suppose that recurrences of that distortion, either on the supply side or on the demand side, would affect the price of the stock over the period of time that the recurrences occurred?

A. I agree.

Q. So that might be a long time or short time?

A. That is right.

Q. I think perhaps we have avoided the semantics problem, Professor.

Now, in this connection, I should also like to ask you a question or two about some testimony you gave on direct examination with respect to the relationship between price and volume of transactions.

Do you remember answering some questions about that?

A. Yes.

Q. In that connection, I thought—you can correct me if I am wrong—in explaining why there was no close or perhaps any correlation between volume of transactions and movement of price, you said, if I understood you correctly, that volume of transactions did not necessarily indicate whether the pressure on the market was on the selling side or buying side. Is that correct?

A. That is correct.

Q. Would it be correct, therefore, to say, Professor Friend, that the fact that there is no connection between volume of transaction, or no correlation between volume of transaction and price movement, does not mean that there may not be a correlation or is not a correlation between distortions in demand or supply and price move-
[fol. 983] ment?

A. I would agree, and I think I would add to that that that is what I thought I discussed to a considerable extent this morning.

Q. That is what I thought you were saying. I just wanted to be clear.

Professor Friend, are you sufficiently familiar with financing practices and underwriting practices to tell us whether in the case of a new offering of stock, whether it be a rights offering or a new issue or a secondary distribution, that the impact of the offering, if any, on the market, sometimes begins to be felt when the first public announcement of the offering is made?

A. I would say yes, that there may be some effect when the first public announcement is made. There is more effect when the offering actually takes place.

Q. But it is not at all uncommon, indeed usual, is it not, for there to be some effect when the first public announcement is made?

A. There may be, yes. I think it is correct that there is a modest effect when the public announcement takes place.

Q. If you were going to measure the impact of an offering of that kind on the market price, would it be fair to start or to choose as a starting point for that measurement the date when the offering was first publicly announced?

A. Yes.

Q. In fact, that might be the best date, might it not, to start with?

A. Yes. I should add, that I attempted to do this in terms of allowing a three months period before the offering date.

Q. Well, that leads me to ask you whether, Professor Friend, on the face of Government Exhibit 293 for identification, [fol. 984] you can tell us how the price of these particular stocks moved on the market between the date when the offering was first publicly known, and any fixed period of time after the offering was completed; can you tell that from this exhibit?

A. You cannot tell this from this exhibit for any particular stock. I would say in the vast preponderance of cases the date of announcement would be in this three-month interval preceding the offering.

Q. Well, granting that, can you tell actually from this exhibit how the stock moved between that date and——

A. You mean from the precise date of public announcement?

Q. Yes.

A. No. I would say two things. First, in direct reply, you cannot; (2), in further reply, that I am very dubious about what the meaning is of a change in price from one particular date to another particular day.

Q. You think those do not have much significance?

A. I would say that you would have to take a little longer period than a day before you could really assess, for most meaningful purposes, the impact on the market of a particular course of events.

Q. Do you know, Prof. Friend, whether in computing these averages in this Exhibit 293, any weighting was done?

A. No, they are simple arithmetics, unweighted.

Q. So that an offering of 28 million dollars goes into the

average at the same weight as an offering of 288 million dollars?

A. Yes.

Q. Do you know whether all of the offerings on this Exhibit 293, for identification, were underwritten or managed in some way by investment bankers?

[fol. 985] A. I know some there that were not—I do not know the relative proportion of underwritten vs. best efforts.

Q. What do you understand a best efforts offering is?

A. A best efforts offering legally is simply an agreement on the part of an underwriting firm or investment banking firm, to be more precise, to sell for the company, using one mechanism or another, as many shares as possible.

Now, I might also add that investment banking firms frequently regard this as almost as much of an ethical commitment as a firm underwriting.

Q. Well, do you know whether all of these offerings that are listed on 293 were either underwritten or done on a best efforts basis?

A. I am not certain of that. I do not know offhand whether there is any example here of a company which attempted to sell direct to stockholders without using investment bankers as an intermediary. The answer is I do not know of any such case, but there may be.

Q. Permit me to ask you this question, Prof. Friend: based on your knowledge, is it your opinion that an underwritten offer of the shares of stock in a particular corporation is likely to have less downward impact on the market than the sale within the same period of time of the same number of shares by thousands of individual stockholders?

A. There are no relevant data I know about, but my own opinion would be that the former would have less impact on the market than the latter.

Q. The underwritten?

A. The underwritten, yes.

Q. Would have less impact?

A. Yes.

Q. Would that be true also in your judgment of an offering made on a best efforts basis?

A. Yes.

[fol. 986] Q. Prof. Friend, toward the close of your direct examination, you will recall that you were asked to express an opinion based on your studies with respect to what the effect on the market would be if a proposal should be carried out which called for the sale of 20 million shares of General Motors stock over a ten-year period, and you returned the answer which you modified somewhat on your return to the stand this afternoon.

Do you recall that question and answer?

Would you like to look at the transcript?

A. Sure. I thought it was the same answer that I gave this afternoon. I trust that it was.

Q. I think it was the same question; I think the answer was slightly different.

That is a little confusing, Professor, because by the result of a mechanical mistake, the question is out of order; and I have noted the page on the top where the question appears.

A. I meant to say the same thing in both instances. I hadn't realized that I said anything a couple of minutes ago which in any sense belied what I said here.

Q. Well, you are the judge of that. I just wanted to be sure that you recollected the substance of that answer.

A. Yes, I do.

Q. I am not interested, at the moment, in a difference, if any, between what you said this morning and what you said this afternoon.

Now these percentage figures that you use here, I take it, are percentage figures which are derived from Exhibit 293, for identification?

A. For the most part, yes. I think I did offer one additional thing in evidence—that earlier study of 1948.

[fol. 987] Q. And those are simple arithmetical averages derived by aggregating these figures that are shown in Exhibit 293, is that correct?

A. Separately for each of the three groups.

Q. Now I understood you to say this morning, Prof. Friend, that, as a matter of fact, each stock offering, in a sense, is different from every other stock offering. Is that a correct recollection?

A. That is correct.

Q. Would you accept a suggestion that in trying to pre-

dict what might happen to a particular price of a particular stock as the result of an increase of supply of that stock that you would do well to look at the particular and peculiar circumstances affecting that stock and the conditions in which the increase in supply was to take place? Do you accept that suggestion?

A. Yes.

Q. Now among other things, would you consider the dollar volume of the new stock that was to be offered?

A. I would consider, certainly the dollar volume.

Q. You would?

A. But I would place more emphasis on the relative volume.

Q. By that, you mean the percentage relationship between the volume of stock offered and the stock of the corporation outstanding, is that right?

A. Yes.

Q. But you would not, I take it, by any means, ignore the absolute dollar volume?

A. No. I would not. I did say this morning, and perhaps I should repeat, that since I rely on my recollection—and I may not have covered that this morning—that the data I have seen suggests that relative volume is much more important than absolute volume.

Q. Is it true that as the absolute volume increases, the [fol. 988] prospects of an impact on the market also increases?

A. Yes.

Q. And that would be true, would it not, irrespective of the percentage relationship between the volume of stock offered and the total amount of stock outstanding?

A. I find that very difficult to answer.

Obviously, if you were offering a very large dollar amount, let us say, in the form of Government securities, and this represented a hundredth of one per cent of the outstanding, I can't believe that this would have any impact at all.

Q. On the other hand, as compared with an offering of, say, a billion dollars market value, the stock might have a very large percentage, even though it was a very small percentage of the stock outstanding of a particular corporation?

A. Assuming not a too small portion, I would agree. I would like again to expand.

There were several offerings this morning, which were in the three hundred million dollar dimension. If you were to adjust in terms of present day prices, it would be close to five hundred million dollars in dimensions. So I would say there was by no means a complete picture of sizeable issues in even absolute dollar amounts in the exhibit this morning.

Q. I understand that. I am trying to determine whether, in fact, the absolute dollar volume does have some relationship to what the impact might have on the market. I take it you agree that it does.

A. Yes.

Q. Now, what other things would you have to look at [fol. 989] in the case of a particular stock? Would you look at the particular conditions in the industry?

A. Yes.

Q. Would you consider any particular or peculiar situations that might affect the state of mind or the psychology of prospective buyers?

A. I would.

Q. In that connection, Professor Friend, is it your opinion, if prospective buyers knew that there would be recurring offers of the stock in substantial amounts over a fixed period of time, that that might affect their state of mind, insofar as the price which they were willing to buy at was concerned?

A. I think there the quick answer is yes; but I think there also are some amplifications required.

To clarify what I mean by my answer—it depends on what you are comparing this situation with. If you are talking about, let us say, one per cent a year for ten years, as against one per cent a year at one time, the one per cent a year for ten years has a much, much greater impact on the market. If you are talking about one per cent a year for ten years, as against, let us say, ten per cent at one point of time, or five per cent at two points of time, it is far from clear this is true.

Again, I have no basis of factual evidence to form a conclusion; but it is my impression, and it is by no means

on a very sound basis—but my impression would be that the situation in which you handle this over a longer period of time would have less impact than the situation in which you handle all of it at once.

But I could not give much evidence to support this.

Q. That is your best evidence?

A. Yes.

Q. I take it, even on that basis, that you believe, in fact, that if the prospective investors know that there are to be [fol. 990] recurring offers of a substantial amount of stock, it may affect their state of mind so far as concerns the price they are willing to pay for it?

A. Yes.

Q. There would be some tendency for them perhaps to wait to see if the price was going to go down before they bought.

A. I happen to think that most investors will be interested in the relative investment merit of the stock at a particular point in time.

But you are quite right. In my opinion, there will be some investors who would hold off; but again, I am not trying to be repetitious or contentious; I do want to say that it is my best—may I use the word "guess"—that a one per cent offering a year for ten years, assuming that the underwriters had flexibility as to when this was to be sold, would have less net impact on the market than ten per cent at once.

Q. But it would still have some impact?

A. Oh, sure.

Q. Professor Friend, this morning you said that you thought that these—I think these were the words you used—that these aggregates, the averages that are based on the aggregates, were of some significance to the issue that is before the Court with respect to the disposition of the stock of General Motors. These averages are based, of course, are they not, on these aggregates, which are derived from historical experience?

A. Certainly.

Q. And I suppose that their significance may differ, depending upon the purpose for which you wish to use them?

[fol. 991] Their significance is higher, is it not, as a measure of what happened in the aggregate, in the past?

A. Yes.

Q. If you are interested in what happened in the aggregate in the past. Of course, if you were interested in what happened in the past, as to a particular company, the aggregate and the average wouldn't be of much help?

A. That is correct.

Q. Now, so far as these aggregates are significant for predicting as to what may happen to a particular stock in the future, there again they may have less significance than they would have as an evidence of what happened in the aggregate in the past, is that not correct?

A. It is always more dangerous to predict than to tell what happened in the past, that is correct.

Q. So far as a particular stock in the future is concerned, giving this technique of aggregate full weight, would it not be correct to say that a sizable offering of stock—or let me put it this way—a sizable increase in the supply of that stock in the future might produce an impact that would, in the case of that particular stock, fall within the range of any of the extremes shown in this table from which the aggregate was computed?

A. Well, I think that before you could say that, you would have to intensively analyze these extremes. As I indicated earlier, I am very dubious that anyone can take a particular illustration in the past, no matter how much you know about the illustration, including the question of who underwrote it, the nature of the underwriting, the nature of the overhang, et cetera, et cetera—I don't think you can infer validly from any one instance in the past; I think you can only infer validly within limitations, that the future may be the same as the past, on the basis of average experience.

[fol. 992] Q. Even though those averages are constructed by aggregate facts with respect to companies of different kinds and issues of different amounts?

You understand, Professor, that I am not questioning this as a method of historical importance. But I am trying to find out what the limitations are on its use as a method of predicting the future.

A. Shall I discuss that for a moment?

Q. Before you do, let me put one more question.

A. I think it is relative to your question.

Q. Finish your answer then, please.

A. I don't know of any completely satisfactory way of telling what is going to happen to the price of GM under all the assumptions you want to stipulate, except the assumptions as to what is going to happen to the price of GM.

Then the question that you have to answer is, "What is the most relevant data, or what are the most relevant data?" I guess, that you can adduce.

Now I think—and this was something of a point that I have been trying to make—that average experience is much more relevant than individual company experience.

Now I grant completely that in discussing average experience you ought to look not only at the average regardless of the amount offered, but you are to take into considerations variations about this average, as you would different amounts of stock offered in a relative sense, as you would different amounts of stock offered in an absolute sense.

I thought, at least, to a limited extent, I had tried to do that this morning.

[fol. 993] Q. Do you mean that you tried to do that in arriving at your averages?

A. No. You may recall that I stated that if you confine your attention to stocks which underwent a ten per cent increase in outstanding, which constituted a fair number of stocks, that on the average you had a decline in relative price of something on the order of magnitude of five per cent, perhaps a little more.

On the other hand, if you went to those stocks which went to a 20 per cent in outstanding—and there I pointed out you had only three stocks, so this is a rather poor sample—that your decline in relative price was somewhere between 10 and 15 per cent, depending on how you defined your period of interest.

Q. Now, do I understand that those averages that you have given us do not reflect any particular appraisal of the particular conditions in the future that might affect the price of a particular stock one way or another?

A. This is just simply saying: if the past is any criterion of the future, these are the relevant things.

Q. But it doesn't represent an appraisal of particular conditions relating to a particular stock?

A. No, it does not.

Q. It does not?

A. It does not.

Q. Now, let me ask you again, Mr. Friend, because I don't wish to be contentious either, but I think we could help the Court if we make this clear.

Based on these aggregates, can you be certain, on the basis of this statistical evidence, that an increase, a substantial increase in supply of the stock of General Motors of the magnitude put to you in the question by Mr. Rey- [fol. 994] craft, could not produce a market impact which might fall within the extremes of the ranges shown on this Exhibit 293, or whatever it is?

A. I could not be certain that this was true.

Q. So that it might fall within that range?

A. It might, yes.

Q. This statistical method in a sense, whatever relevance it has, and I understand how you limited it, it rather depends on the old assumption that history may repeat itself, is that right?

A. Having a "scientific" turn of mind, I am not quite sure how else you can form impressions of what is likely to happen in the future, with all due limitations of the method.

Q. I have heard it said that though history does not repeat itself, historians repeat one another. Perhaps economists haven't gotten to that point.

A. I have also heard it said that if you can't learn anything from history, it is doubtful if you can learn anything at all.

Q. Have you read the Government plan, the proposal that was filed with the Court?

A. I have looked through all these materials. I want again, not trying to be unduly cautious, but I have not read any of these materials as carefully as I might have. I tried to get background information from each of these documents.

Q. Well, were you aware that the sale of the 20 million shares was to be accomplished in the same 10-year period by an annual distribution of four million shares pro rata to certain stockholders of the du Pont Company?

A. I am sorry. Do you want to repeat that question?

Q. Let me put it again: Are you aware that in the Government plan there is a provision not only for the sale [fol. 995] of approximately 20 million shares of General Motors stock over the 10-year period, but there is also provision that requires distribution annually to du Pont stockholders of approximately four million shares of General Motors on the pro rata basis?

A. It is my impression that that was one of the Government plans that was discussed in some document, yes.

Q. Well, I am trying to find out whether—let me put this question to you: in answering the question with respect to the market impact of the sale of approximately 20 million shares, did you take into account that each year during the ten-year period, approximately 4 million shares would be distributed pro rata to du Pont stockholders?

A. Well, you see, I took this into account indirectly, but by no means completely, in the sense that I pointed out that again judging from the historical record, if you had a 20 per cent increase in stock which was outstanding, that this in the past had been associated with declines in price in the magnitude of 10 to 15 per cent.

In other words, clearly you would have a larger price impact, without being precise as to what this impact would be quantitatively.

There is one other point which I think I should make, and that is this: that I would think that if a plan were to envisage distribution of stock to individual stockholders as against working out some plan whereby individual stockholders who are not interested in getting this stock could have it made subject to some large block offering, that such a plan might have a larger effect on price than the one I have talked about.

[fol. 996] I am not quite sure that I have made myself clear.

Q. I am not sure you did. Will you try it again, Professor?

A. Yes. I am saying a very simple thing in very complicated fashion. That if you were to distribute, let's say, 4 million shares——

Q. Per year?

A. Per year, to public stockholders. Now, the question at issue is how much would be sold? Obviously, if you don't sell it, this wouldn't have much effect on the market.

If you were to assume that, let's say, to use the figures I think in the du Pont memorandum, one to two million might be sold a year, this would have a larger impact on the market than one to two million shares sold a year which went through an underwriter.

So without passing on the merits of any particular plan, I would think that common sense would dictate that you would try to have as much of such stock pass through an underwriting or to an underwriter than to stockholders who would eventually or who plan to sell it in the open market.

Q. Well, I am not sure yet that you have quite answered my question, professor. The Government Plan, as filed with the Court, requires the distribution of 4 million shares annually pro rata to shareholders?

A. Yes.

Q. In addition to the shares that are to be sold either annually or at different periods of time, depending on how you read the plan.

Now the question I am asking you is simply this: whether in measuring the impact of these sales on the market price of General Motors, you took into consideration the effect on the market price of the annual distribution of 4 million [fol. 997] shares?

A. Well, let me try to answer again. I said I thought two things: that past experience, of course, does not include any such case——

Q. That is a case where history can't teach us very much?

A. Some things, but not as much as we would like it to teach us.

The second point I was trying to make is that the impact on the market of these additional 4 million shares distributed to stockholders, abstracting from any other considerations, would be determined by how many were sold by these stockholders who received this distribution.

Q. That is right.

A. Now, I am saying that if these shares that were sold by individual stockholders could be funneled into block underwritings, there is no reason why this should have

any different an impact per share than any other type of block underwriting.

Q. Did you assume that they would be funneled into a block underwriting?

A. I didn't assume anything, as I indicated in my answer, since there wasn't such a situation in the past. But I would think common sense would dictate that to the extent possible, you would funnel these into block underwritings.

Let me indicate the sort of thing that could be done. Presumably, you could circularize all the stockholders and ask whether they would want the company to arrange an underwriting to sell some part of the stock that would be distributed to them.

Q. Do you think that would be practical?

A. I hadn't given the matter much thought up to here. I don't see any reason why it wouldn't be, offhand. This is an offhand reaction.

[fol. 998] Q. Assuming that four million shares are distributed annually, and that there is no block underwriting of those four million shares, do you have any opinion as to what the effect, the total effect of that arrangement on the market price of General Motors would be?

A. Are you stipulating any assumption as to how much of this will be sold?

Q. I am asking you whether you have an opinion on what would happen on the assumptions I have stated.

A. The only thing I could say is that if it were done this way and a substantial proportion were in fact sold, that this would have a large—I am not certain of this, but this, I would think, would have a larger impact on the market than if it were handled in what I suggested I regard as a more intelligent way of handling it.

Q. Would it increase the market impact as compared with what the market impact would be if you look at the sales alone?

A. I think so, yes.

Q. Did you make any assumption in considering this aspect of the Government's proposal as to how the shares to be distributed would be taxed?

A. No, I did not. I just addressed myself, since I am no tax expert, to the question of what can you say about what

is likely to be the price impact of a given increase in supply.

Q. You don't know, for example, or you have no knowledge as to whether the shares distributed would be taxed on a capital gains basis or as ordinary income?

A. I think I have this much knowledge of the law, that apparently under the present law, if the Frear bill does not go through, they would be taxed on a regular income tax basis.

Q. On a regular income tax basis?

A. Yes.

[fol. 999] Q. Professor Friend, in your opinion, could General Motors today issue and make a public offering of a new issue of its stock in an amount equal to seven per cent or eight per cent of its total stock outstanding now, and sell that new issue on the market without creating an impact of any more than five per cent?

A. I find this quite difficult to answer. You mean, in addition to the overhang of whatever might be put on the market as a result of divestiture?

Q. Let's take it without that, first.

A. Then I would just give you the same answer I gave earlier, that I would say that on the basis of the past record, there is no evidence that you would get a much larger impact on the market.

Q. Your answer is yes, they could?

A. My answer is that I know of no evidence which would suggest they could not.

Q. Are you prepared to answer the question as to whether or not they could?

A. No, I am not.

Q. What did you mean by overhang in your answer a moment ago, Professor Friend?

A. I wasn't clear whether you were putting seven per cent of new GM on the market, in addition to anywhere from seven to twenty-one per cent, as a result of divestiture.

Q. You were speaking of stock that might be divested under the Court judgment as overhanging the market?

A. Yes.

Q. Would that affect the answer you gave me a moment ago as to the capacity of General Motors to issue new stock

in the amount of seven per cent of its outstanding stock?

A. Oh, surely. If you were trying to sell some seven or [fol. 1000] eight per cent of new stock, which I suppose at present prices would be some billion dollars——

Q. About a billion dollars.

A. And if, in addition, you were going to sell a billion dollars as the minimum of additional stock from divestiture, which of course is an assumption, and in addition there might be something added to this, clearly you get to a very large amount, which even in terms of the relative figures I used earlier, would be associated with, on the average, of something close to a 15 per cent decline in price.

Q. You spoke this morning of the necessity or desirability of there being elasticity in the method in which these shares might be sold. In your discussions with Government counsel, did they call your attention to any provisions in their proposal to be filed with the Court——

Mr. Reycraft: I object. If he wants——

By Mr. Cox:

Q. (Continuing) That would have that kind of elasticity?

Mr. Reycraft: I object to the question.
You are asking about my conversation.
Mr. Cox: Suppose we have the question read.
The Court: I didn't hear the question.

(Question read.)

Mr. Cox: Do you object to my asking him about the conversations? . .
I will reframe it, if you do.
Mr. Reycraft: I think it is objectionable, but he may answer.
Mr. Cox: I will reframe it in deference to Mr. Reycraft.

[fol. 1001] By Mr. Cox:

Q. Can you tell me of any provisions in the plan which the Government has filed with the court which provide for this kind of elasticity?

A. I am afraid I am not that familiar with the Government plan.

I think that is something I would rather have the Government answer.

Q. Well, did you assume in your answer to Mr. Reycraft with respect to the scope of the market impact, that the sales would be made all at once or at intervals, or that they might be done either way?

A. Oh, again, I really made no assumption as to the timing of any offerings associated with divestiture, but rather indicated what past experience had been in terms of offerings of given dimensions; and in addition, I hazarded the opinion that the more flexible the plan—as I say, I don't know what the Government plan is in precise terms—but the more flexible the plan, the less would be the impact on the market.

In other words, you don't offer stock when the market is weak. You offer stock when the market is strong. It is this simple.

Q. In your judgment, is there any class of persons who are particularly qualified to decide those questions as to when the stock should be offered and at what price, what amount?

A. I think the one class of persons that would have the highest competence would be the investment bankers.

Q. Do you know of anyone who would be more competent?

A. I think it depends on the precise content of your question.

[fol. 1002] If you are talking about the mechanics of selling, the timing of selling, the appropriate pricing under various circumstances, I think I would agree that the investment banking group would be most competent.

Q. As to the amount the market would absorb at a particular price, would you include that?

A. I think in a given market environment, yes.

Q. It would always have to be decided at a given market environment, wouldn't it, of one kind or another?

A. No. I say if you are asking what would likely be the effect on the average at some period ahead, I might place fully as much weight on the average experience in the past as I would on a consensus of investment banking opinion.

Q. Suppose you are not asking what would be the experience on the average in the future but you are asking what

would be the experience with respect to a particular stock in particular conditions at that time.

That is what I am asking you.

A. I would look at both pieces of evidence.

Q. Are you qualifying or eliminating or withdrawing any answers you have given about the competence of investment bankers?

A. No, no.

Q. On Exhibit 293, Professor Friend, there are eight secondary distributions listed. Now, which one of those would you regard as most comparable to the divestiture of the stock of General Motors that is now held by du Pont?

A. I don't know that any one is the most comparable.

Q. Well, are any of them comparable?

A. Well, the larger the percentage additions to supply, certainly the more comparable. There is no firm here with [fol. 1003] a sizable relative secondary which is in the same industrial field, so there is no firm which is what I would consider very comparable. But I suppose the Aluminum has some degree of comparability. General Motors would be ideal in this respect except that, though the dollar amount is fairly large, the relative amount is quite small.

Q. Of course, even the dollar amount is small as compared with the sales involved in the Government's proposal, is it not?

A. Yes, yes.

Q. So I take it that although no one of the offerings of the secondary distribution is itself very comparable to the problem here, by putting them all together you can get aggregate data——

A. Which I think is more comparable than any one. Not any one that might theoretically be available, but any one that is in fact available.

Q. Professor, did I understand you in direct testimony to suggest this morning that perhaps these figures on Aluminium Limited are not altogether indicative of the impact of that offering on the market or did I misunderstand you in that?

A. Yes. My recollection is that the price experience of other aluminum stocks, specifically in the year ending April, 1954, and also in the year ending January, 1955, was

more favorable than the price experience of the market as a whole.

I must confess I do not recall the price movement attached to that '51 offering.

Q. Do you recall how the price of Aluminium Limited moved in relation to other aluminum stocks?

A. Not specifically.

Mr. Cox: Could we have a five minute recess?

[fol. 1004] The Court: The Court stands recessed for ten minutes.

(A recess was taken.)

The Court: Proceed.

Mr. Bushby: If your Honor please, I would like to ask a few questions of the witness.

The Court: You may.

Cross examination.

By Mr. Bushby:

Q. Doctor Friend, you spoke in your last answer this morning to the question of Mr. Reycraft as to the impact on the market of an offering of two million shares of General Motors each year for ten years that the impact might depend on the flexibility given the underwriters.

"What type of flexibility do you refer to, sir?" was the following question.

You said: "Permitting them to pick the market in which they sold the stock."

I suppose you mean by that, whether they are selling in a declining market when General Motors was weak or when General Motors was strong; is that correct?

A. Yes.

Q. (Continuing) "Also permitting them to use the type of offering."

What do you mean by the type of offering?

They could not make a stock rights offering out of this, it has to be a secondary, doesn't it?

A. Well, this is not the only thing type means.

Q. It would have to be a secondary, wouldn't it?

A. Of course it would have to be a secondary.

[fol. 1005] Q. And it would have to be a registered issue, wouldn't it?

A. It would have to be a registered secondary.

Q. All of the issues you referred to as secondaries on your exhibit for identification 293, were not registered issues, were they?

A. No, they are not all registered.

I might also say I do not see the relevance of the distinction between a registered secondary, and a non-registered secondary for impact on price.

Q. Oh, you do not think there is any more flexibility in an unregistered secondary?

A. I see no reason why the impact on price on a non-registered secondary should be any greater for a given increase in supply than a registered secondary.

A registered secondary can use just about the same type of marketing mechanism as a non-registered secondary uses.

Q. But it does not have as much flexibility?

A. In what respect?

Q. Well, in timing; they will have to file a registration statement.

A. Even in timing I would argue that you could, once the investment bankers have the right to set the offerings at the times that they want it. You would get just about as much flexibility in this respect as you could get.

Q. Well, you know, of course, when it is a registered issue they have to file a registration statement.

A. I am aware of that.

Q. Some time in advance of the offering. It has to become effective, let us say, twenty days or three weeks later. Can not the market change very much in those three weeks?

[fol. 1006] A. Yes. As a matter of fact, the offering does not have to be made either.

Q. No; you think it is not injurious to withdraw registration?

A. In what respect?

Q. On the success of the offering when made?

A. There would not be any offering if they were withdrawn.

Q. But that stock has to be sold, does it not?

A. You mean three years later if—

Q. No; say months later, weeks later.

A. Well, if you have complete flexibility in a weak market, why would you sell a month later?

Q. But you are not answering my question.

A. I am trying to. I apparently do not understand it.

Q. I am saying, don't you know when it is a registered secondary the bankers have to file their registration statement, or somebody has to file a registration statement?

A. That is right.

Q. And a period of some three weeks goes by before the offering can be made?

A. That is correct.

Q. And the market price may change in that period?

A. Yes, that is correct also.

Q. The announcement of the offering may depress the price?

A. Yes, in any offering this is true.

Q. Depress the price, so that it may become undesirable to make the offering at that time?

A. Yes.

Q. And in fact they may withdraw the offering?

A. Yes. I think furthermore that——

Q. Well, you say they have to withdraw it. Now, that stock has got to be sold under this Government plan within [fol. 1007] a year?

A. I was not making even that asumption. What I meant by "flexibility," by no means necessarily included ten approximately equal installments.

Q. You what?

A. I said I by no means meant to imply that flexibility referred to something like changing the timing within a year of one of ten equal installments.

Q. Well, what did you mean, please?

A. That, for example, if you had a nice strong market you might have had half a billion dollar offering in that sort of market.

Q. Well, how could you do that?

Don't you know that under the Government plan they can only get two million shares the first year and two million shares the second year?

They cannot get more than that, because this is part of a dividend.

A. It is my impression that either I did not make myself clear or you were not listening to what I said. I indicated, I thought very clearly, I was not familiar with the details of the Government plan.

I answered hypothetical questions and I also gave answers to hypothetical assumptions, under hypothetical assumptions, which I stipulated.

Q. Now, if I say to you the Government plan provides that the trustee who makes these sales can only get two million shares a year because it is part of a dividend, a general dividend by du Pont of General Motors stock, and, therefore, would have only two million shares each of the ten years, then you cannot inject your further element of flexibility, can you?

A. If this is the Government plan this would have less flexibility attached to it than the scheme I had in mind and, moreover, it would have more impact in price than a more flexible scheme.

[fol. 1008] Q. Do you know what ratio or what comparison the investment bankers usually make in order to determine the ease or difficulty of marketing an offering; that is, what they compare the dollar amount of the offering with?

A. I don't understand the question.

Q. Well, you have compared the dollar amount of offering or the amount of the offering with the amount of outstanding stock of the corporation involved.

Do you know whether or not the investment bankers make that comparison?

A. It is my impression that this is one of the comparisons that they make.

Q. Don't you know that they make a more important comparison, what they consider a more important comparison?

A. I do not know that they make any comparison which I would consider more important.

Q. Wouldn't you consider it an important comparison to compare dollar amount of the offering with the volume of trading, ordinary trading in that stock on the Exchanges?

A. I would think this is another comparison that might legitimately be made, yes. I do not see that it is any more relevant than the comparison I made.

Mr. Bushby: Well, I will let that be developed by somebody else.

Mr. Tierney: If it please the Court, at this time I have no questions to ask this witness. However, we have been served with a document here that has been identified as Exhibit 293. It is particularly complicated, for me particularly, and I would like to have an opportunity to study it to [fol. 1009] determine whether or not I want to cross examine this witness, and I would like to have him subject to being recalled, if the Court please.

Mr. Reycraft: If the Court please, Mr. Hill is the one who prepared the exhibit, and he will be available all week for examination.

Mr. Tierney: I may want to ask this witness a question, and if I could have time to study the exhibit, I would appreciate it.

The Court: Should it develop that it is sufficiently important, the Court may order a recall.

Are there any other questions?

Mr. Dallstream: I have a few questions, if your Honor please.

Cross-examination.

By Mr. Dallstream:

Q. Professor Friend, have you ever spent any part of your career in the investment banking field?

A. No.

Q. Have you ever participated actively in the deliberations by which corporate securities are sold by investment bankers?

A. I think the answer to that is no.

The Court: I didn't hear your answer.

The Witness: I say I think the answer to that is no. I have heard deliberations, but I have not participated actively.

By Mr. Dallstream:

Q. Are you acquainted with the fact that there have in investment banking history in recent years been some issues which have been flops, in the language of the street?

A. Yes.

[fol. 1010] Q. And in some instances, some of the underwriting houses have even failed as a result of the issues of some size in which they participated being flops?

A. I don't know any indication of this sort in connection with quality firms.

Q. Do you know that there have been some enforced mergers in the past as a result of the fact that certain New York stock exchange houses participating in corporate distributions have been loaded up on an issue which they couldn't sell, and the collateral value of which shrunk to the point where their capital was wiped out?

A. I have a vague recollection of the sort.

Q. What would you think would be the result if on distribution number 1, or number 2, or number 3, under the Government plan, they hit a bad market and the issue was a flop?

What would be the effect upon subsequent distributions?

A. If the issue were a flop, it would certainly affect the reception of any subsequent issues for a considerable length of time.

Q. You spoke of the advantage of some arrangement perhaps being made whereby the shares which would be distributed under the Government plan to the shareholders whose shares are not obliged to be sold under the Government plan could be made available for sale, if they desired to dispose of them by the same investment banking group selling the shares that were to be sold?

How do you envisage that such a program could be worked out, considering the fact that there are approximately two hundred thousand people involved as distributees of the stock?

[fol. 1011] A. I would say that 200,000 letters would be sent to 200,000 people, asking them, as you are frequently asked now in connection with rights, whether they wanted the stock or they wanted the stock sold for them.

Q. Then you would put the names and all of the pertinent information about those people in the registration statement of the Securities and Exchange Commission?

A. I don't know the legalities here. Perhaps I should, but I would doubt that this is an insurmountable obstacle.

Q. Don't you think the average person who was a distributee of shares would prefer to let the market be supported by the shareholders whose shares are obliged to be

sold, and then effect their sale on that protected market without any cost to them?

A. I don't understand the question.

Q. Well, I suppose the people who are going to have to sell their shares, if they form an investment banking group to sell the shares, will have to pay the cost of that banking operation, will they not?

A. Yes. Now I am not suggesting that they form an investment firm of any sort and have an underwriting; I am suggesting that the corporation distributing the shares—in this case du Pont—would contact the underwriters in connection with the sale of what proportion of the stock the public stockholders of du Pont did not want.

Now what is the question in this context?

Q. Well, don't you think that the person who is entitled to receive his shares rather than participate in a sales program in which he will have to bear his pro rata share of the cost of both the sale and also the protection of the [fol. 1012] market during the distribution period will prefer to take his shares and market them against a protected market, and thereby avoid the cost of the distribution, as far as he is concerned?

A. Well, I can't answer this on the basis of any experience; but my own impression and my own behavior under such circumstances, assuming that I were to sell the GM stock distributed to me, would be to have the company take care of this, paying the several stock exchange commissions, which presumably would be involved.

Q. May I refer for just a moment to Exhibit 293, Dr. Friend?

I note in the first group that you have included the General Motors distribution which was made in '55, and you show there a rise in price of 44.79, in the fifth column which, referring to the legend at the bottom, it would seem to indicate that that was the increase in price from the end of the month following the market distribution to the end of the twelfth month following the distribution. That would be an 11-month period.

A. Yes.

Q. That did not take into account any rise or fall in the prior period, did it?

A. No. The earlier figures took care of that.

Q. Were you acquainted with the fact that during this period in about the seventh or eighth month following this distribution, that General Motors reported it was in a year of its greatest earnings in history?

A. I was aware of that, yes.

Q. Did you also know that there was a stock split at that time, and that the price of General Motors shares took a considerable rise, as the result of that stock split?

A. I am aware of the fact that there was a stock split, yes.

[fol. 1013] Q. Was there any adjustment made in these figures for the stock split or the effect of that stock split?

A. No, except—May I qualify that?

Except, of course, to put them both on the same unit basis.

Q. Do you know what other companies in this list had any unusual situations that developed under the years in question?

A. Yes. Quite a few had unusual circumstances applicable to their particular industry. I thought I mentioned a few of these; but I am sure I could mention a few others.

Q. To make these figures really useful, don't you think you would have to make adjustments in these figures due to the abnormalities that affected particular companies in that year in question?

A. I think that the figures as they stand are quite useful. I think beyond that that there are other relevant data which would be also quite useful. As a matter of fact, some of such data the Government was not able to get up in view of the time limitation. But this is by no means to say that I don't regard the data here as highly useful.

Now you take an individual stock like General Motors Corporation, and if you look at Column 5, to which you addressed yourself, General Motors went up some 45 per cent in the eleven month period following the month after offer. The general Standard & Poor Industrial Index went up some 27, 28 per cent.

Now, actually, if you were to compare General Motors in that case with the industry—with the industry exclusive of General Motors—you would find that the industry, exclusive of General Motors, had practically no price; in other [fol. 1014] words, there would be a bigger differential. It is always very easy to take an individual situation and, I

might say, almost ad nauseam, give the peculiar circumstances attached to that particular offer. But I would say when you average all offerings, you get away from a good deal of this.

I wouldn't deny that it would be desirable if there were an objective way of doing this, of getting another such table up where people made their best adjustments of prices of individual companies based on whatever information they could bring to bear.

Q. As a matter of fact, Doctor, you have in each year here only a relatively few number of companies. You have one company in 1951, you have three companies in 1952, one company in 1953, three companies in 1955, three in 1956 and so forth. Each company is in a different situation in perhaps each year of its life, is it not?

A. Each company is in a different situation in each year of its life.

Q. And the companies in different industries may be affected by entirely different situations from those in others?

A. It is quite possible.

Q. So that really for the comparison as to any one year, we have a relatively small number of companies here for the purpose of reaching this average that affected the situation in that particular year under consideration?

A. I would agree with that conclusion.

Q. Now, one other question that I would like to ask before I finish.

[fol. 1015] I am particularly interested, Dr. Friend, on the phase of this question that involves the du Pont shareholders as recipients of the shares of stock which would be distributed under this Government plan.

Did you know that if all of the 63 million shares of General Motors held by du Pont were distributed in a single year to the shareholders, that almost 60 per cent of that distribution would be tax free, and that it is only by distributing over this longer period of time that it becomes taxable at ordinary income tax rates for all of the shares?

A. Yes.

Q. Have you given any consideration as to the impact and effect upon the average shareholder of this distribution being made over a ten- or twenty-year period, as against a single period?

A. I gather you are raising the equity question, as to the effect of taxation.

I haven't addressed myself at all to this.

Q. No, I am raising this question: You said on your direct examination, if I correctly understood you, that based upon the past, if it was any guide for the future, there was some indication that all of the shares might be distributed with perhaps a market impact of only something between 15 and 20 per cent, I think I understood you to say.

Did I understand you correctly?

A. I didn't address myself to the full impact. I said based on the past experience of 20 per cent increase in supply, the market impact on the average has been something close to 15 per cent.

[fol. 1016]] Q. Have you any notion as to whether all of these shares could be distributed within a single year, with only an impact of 15 per cent?

A. Whether you could distribute something like three billion, close to three billion in securities?

I don't know what the impact would be. This would be a larger dollar amount than anything we have had historically, and it would be a somewhat larger increase even in a relative sense; so that, presumably, if you relied on past experience, the impact would be in excess of 15 per cent, if, in fact, you were to put on the market something like three billion dollars of securities.

Q. But there has never been anything in history that was really comparable with that amount of securities of a single issue offered at a single time?

A. I agree.

Q. Has there ever been in history anything comparable to the offering of 63 million shares over a 10-year period, where the public knew that every year there would be an offer, and that this weight of stock was hanging over the market?

A. There is certainly no very close parallel. And if you are talking about absolute amounts involved, there is nothing nearly this large, with the possible exception of the AT&T situation, which I think is rather different. But except for the AT&T situation, we certainly have nothing that comes close to this in dollar magnitude.

Q. The AT&T situation, after all, has been made up largely of offerings of convertible debt securities where they were offered at bargain prices to their own share-[fol. 1017] holders who either had to purchase or take their profit, in other words exercise their rights in order not to lose their relative position?

Isn't that true?

A. Yes. I might say there is no obvious evidence that AT&T stock in the process was significantly depressed, but on the other hand, there was no very strong evidence that it wasn't.

Q. Further, Doctor, we are dealing in AT&T with a public utility stock, a company whose rates are fixed by public bodies, and which is, in effect, guaranteed a fair return by law, is that not true?

A. You are dealing with a situation which is fairly close to being the usual public utility situation.

I think it is rather different from an electric or gas utility situation. It is a riskier type of investment, but it does depart from the GM case in this respect.

Q. Did you know that in the public surveys which have been made relative to public utility services, the general public in the United States regards its telephone service higher in point of service than it does any other public utility service that they receive?

A. I must say I don't know this to be true, and I am not sure what the relevancy is.

Mr. Dallstream: Perhaps we can offer that evidence before this is over.

The Court: You say they would rather dispense with electric lights than the telephone? Is that what you mean?

Mr. Dallstream: They regard the service rendered [fol. 1018] by the AT&T and its subsidiaries as sounder than the other public utilities.

I think most of the ladies, however, would much prefer to keep the telephone and go back to lamp light than to give up the telephone and keep the electricity.

The Court: I think that is a logical conclusion.

By Mr. Dallstream:

Q. One further question, Doctor Friend. Don't you think we would have a better picture of the impact upon the market for the purposes of this case where, what we are

primarily interested in, is what is going to happen to these shareholders whose securities have to be sold, either by judicial fiat or because of tax impact, if our tables showed the difference in market price between the day preceding the public announcement of the offering and the low point within the year after the security was offered rather than take the arbitrary date of two, three and one month before the offering, and compare all this with the final date one year after the offering?

A. I may be misunderstanding your question, but are you implying that a fair basis of assessing the market impact of a new offering would be to go from the day prior to the public offering to the low point in the subsequent year?

Q. The low point after the public offering until it shows that it is recovering from the public offering?

A. You mean disregarding completely the fact that stocks will fluctuate for any number of reasons, and you might as well take the high point as the low point?

[fol. 1019] Q. Oh, no. I think you may properly adjust as against the market during that same period to see whether a market is up or down.

A. But you will take that precise day when the stock is lowest relative to the market? If this is your question, I think it is most unfair and biased. I would think it is equally biased to go to the high point of that stock relative to the market in a subsequent year. Stocks fluctuate for a variety of reasons.

Q. Do you know what the average period of time after a public offering is before the stock usually has recovered from the impact of the public offering?

A. This varies with the stock. I think normally if you take a period as long as a year to fifteen months, you would have covered this period quite adequately. There may be exceptional cases where this would not be true.

Q. Doctor, isn't it of rather academic interest to the du Pont shareholders who are going to receive the distribution of this General Motors stock and have it sold on the market, whether the stock recovers 15 months from the last day of the month, 15 months from the date or 12 months from the date? Aren't they more interested in where and at what market price their shares are going to be sold?

A. Let me say that I think there is a lot in what you say, but if I understand the inference that you are drawing, I believe this to be completely incorrect.

Actually, if you take a look at the exhibit, you will find that only a small part of the effect on price occurs in the [fol. 1020] period of offering. So that actually the average effect in the month of offering would typically be less—again on the average—than for the period which I took, which I thought was fair—a longer period.

Q. Don't you think that the effect really begins with the day that the public announcement is made that the shares are to be offered?

A. I think——

Q. Following the registration statement of a registered issue?

A. I think there is some effect starting then, yes.

Q. And in most cases, doesn't the period of three weeks to a month intervene between the date the registration statement is filed and the news becomes public, and the date of the public offering?

A. Yes.

Q. And in the average case or in most cases, isn't the impact of a further drop largely confined to a period of one to three or four months following the offering?

A. This I am inclined to disagree with. This I think, is much more variable. Frequently this is true. Frequently you have to go, I think, for as much as a year before you get the full impact.

Q. You will agree, though, Doctor, that it isn't very much comfort to the du Pont shareholders whose shares are going to be sold to find out some few months later that the market is recovering?

A. I agree completely and it is for this reason I broke up the periods the way I did.

Mr. Dallstream: I have no more questions.

Mr. Cowen: Your Honor, I have just one question.

The Court: You may inquire.

[fol. 1021] By Mr. Cowen:

Q. Did I understand you to say, Doctor, that you did not take into consideration how many shares of General Motors, for instance, were traded on the market in pre-

ceding periods of a year, two years, or five years in considering your answers?

I think you said you related it to the total of the outstanding shares of stock, but not as to how many shares were traded on the market, is that correct?

A. Yes, that is correct.

Q. Do you know that there was an average of some 6 or 7 million shares of General Motors stock traded on the market out of the 280 million shares issued?

A. This is on the New York Stock Exchange, yes.

Q. Do you know if you increase that by a third, by taking two million shares, don't you think that would have some effect? Instead of relating it to the 280 million shares, shouldn't you have related it to the amount of shares traded on the market?

A. Let me answer that completely.

First of all, just to get the data more accurate, my best recollection is that 7 million shares represents the average sold on the New York Stock Exchange in recent years.

As I recall, you had another couple of million shares on other exchanges. We don't know how much was sold on the over-the-counter markets, but if you use the normal [fol. 1022] blow-up of about a third, this would be nine and a third, and this would be 12 million shares a year.

Q. I don't know that it is that much.

I understood it was much less, but nevertheless, go ahead.

A. One part of this is a matter of record. The amount sold on exchanges other than New York, I think you will find 2 million is a pretty good figure.

In addition, you do have the over-the-counter area, and I am just using the average number to blow up by—I admit I don't know whether it is larger or smaller—so maybe it is a dimension of 12 million.

Now, I would say it would be relevant to indicate in all of these cases, not only in the General Motors case, what would be the relationship of the increase in stock to the volume of trading.

But I would say also that, in my opinion, it is less relevant than relating it to the outstanding. I mean, the fact that you have people who do not want to sell stock is presumably relevant to price-making.

Q. At any rate, you did not consider it—the latter, I mean?

A. There are a number of things which it would have been desirable to do in addition to what was done here, and had the Government had the time and resources, I certainly would have recommended at least that they do it.

Q. I assume they have the resources. I don't know about the time.

A. This is not completely clear, I understand.

Q. Would you consider, Doctor Friend, that if the Government's plan went through and some two million [fol. 1023] additional shares were sold on the market by reason of the tax impact, stockholders who are forced to sell, added to the two million which would ordinarily be sold, you now have four million shares of stock, and compared to the stock sold on the New York Stock Exchange you now have a 60 or 70 per cent increase in amount of shares ordinarily traded.

You didn't take that into consideration either.

A. I must confess I don't understand your arithmetic.

Why are you comparing the four million to seven million rather than the 12 million?

Q. Compared to the 12 million then.

It still amounts to an increase of a third, which is quite an increase in any one year, and this is to be continued and repeated over a period of ten years.

You did not, however, consider that in your studies, as I understand it.

A. Those data are not reflected in this particular exhibit.

Mr. Cowen: That is all.

The Court: Any other questions?

Is there any redirect?

Mr. Reycraft: Yes, your Honor.

Redirect examination.

By Mr. Reycraft:

Q. Dr. Friend, in expressing the opinions you have, did you rely solely on this Exhibit 293 for identification?

A. As I think I explained this morning, I was relying on other data as well. The first such body of data was that [fol. 1024] very small scale study which I carried on in early 1948. Then, secondly, just observation of the market generally. I think—let me rephrase that—it is my impres-

sion that most analysts have found it rather difficult to find much of an impact in stock price associated with rather moderate increases in outstanding stock.

Q. This exhibit which you asked to have prepared, consists entirely, does it not, of situations where there is an imbalance of supply and demand?

A. I am sorry——

Mr. Cox: May we have the question read, please?

(Question read.)

By Mr. Reycraft:

Q. By definition, does it not include that?

A. Yes.

Q. And that is the purpose of it and the relevance of it, is it not?

A. Yes.

Q. Now referring to the General Motors rights offering, which is indicated on this exhibit, and referring to Column 5 and referring to all of the data on this line, are you able to discern any market impact by reason of the volume of stock which came on the market through this offering?

A. Well, let me be repetitious, since it is highly relevant. It is extremely difficult to conclude much from an individual stock experience, but surely these data give no indication of any significant impact of this particular rights offering on the market.

Q. I believe the record shows, but I am not sure that the question is clear on this point which was asked on cross, that this rights offering involved something in the neigh- [fol. 1025] borhood of 4½ million shares of $5 par value stock and approximately 13½ million of 1⅔ par value stock. Do you think that the experience in this offering has any usefulness in this proceeding in terms of forming a judgment as to what the market impact of a stock divestiture will be?

Mr. Cox: I object to the form of the question. He may ask the witness whether he has an opinion based on his experience, I believe.

By Mr. Reycraft:

Q. May we have your opinion, Dr. Friend, if you have one?

A. I would say this would obviously be one of the more relevant offerings, both in terms of the stock involved and in terms of the absolute and relative amounts involved.

On the other hand, I must insist on being repetitious. I would not place too much emphasis on any single experience.

Q. You wouldn't, for example, infer from this exhibit that the increase in supply at this point was responsible for the better performance of General Motors in the market, would you?

A. I would say that would be clearly nonsensical.

Q. Dr. Friend, have you had occasion in the past to address investment bankers or to be invited to participate in any proceedings involving investment bankers?

Mr. Cox: May I inquire, if it please the Court, to what aspect of cross-examination this question is addressed?

Mr. Reycraft: Yes. I believe there were a number [fol. 1026] of questions addressed to the competence of underwriters as compared with historical analysis by Dr. Friend.

Mr. Cox: Is it addressed to that point?

Mr. Reycraft: Yes, sir.

Mr. Cox: All right. Go ahead.

By the Witness:

A. It is difficult to know what part of my background is relevant here. I do give an annual talk to the Investment Banking Seminar, co-sponsored by the Investment Bankers Association of America and the Wharton School, on recent developments or recent trends in the stock market. I have had a fair amount of experience in dealing with investment bankers, but I certainly have had no direct experience in connection with underwritings and things of this sort.

Mr. Reycraft: No further questions.

The Court: Any recross?

Recross-examination.

By Mr. Cox:

Q. Dr. Friend, did I understand you to say in response to a question on redirect, that in each one of these cases there was an imbalance in supply and demand?

A. Yes.

Q. How do you know that?

A. By my definition of imbalance. I said that any time that you put on the market or attempted to take out of the market a large block which is superimposed upon normal trading in this particular security, you have a temporary imbalance.

[fol. 1027] Q. You have to be patient with me because I am not sure I understand you.

Does that simply mean that in each one of these cases there was a large offering of stock?

A. That is right.

Mr. Cox: Thank you.

The Court: You are excused.

(Witness excused.)

Mr. Metzger: The Government will recall Mr. Boni.

Alfred Boni, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Mr. Metzger: Your Honor, in order to facilitate the proceedings as far as we can, we are going to depart from the previous procedure and relate this part of our examination of this witness to an introduction of the various exhibits underlying his testimony, to which we will then return.

Q. Mr. Boni, referring to Volume 2 of your principle study, Exhibit 2 contained therein——

Mr. Metzger: The Government would like to have this exhibit entered for identification—marked for identification as Government's Exhibit 296.

(Thereupon said exhibit was marked Government Exhibit 296 for identification.)

[fol. 1028] By Mr. Metzger:

Q. Mr. Boni, was this exhibit prepared under your supervision and direction?

A. Yes, it was.

Q. What does it show?

A. It shows the monthly price changes of Standard & Poors industrial index of 425 stocks of the 50 industrial stocks, or, rather 50 utilities, and 25 railroads plotted on a monthly basis for the years 1946 through May 1958.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Metzger: I offer Government's Exhibit 296.

The Court: Did this witness prepare all of the exhibits in that book?

Mr. Metzger: Yes, sir, they were all prepared under his supervision.

The Court: Well, is it necessary to point them out separately?

Mr. Metzger. I believe Counsel have objections to various of these exhibits and schedules, and they wish to refer to their objections severally.

The Court: Approximately how many exhibits are there in that book?

Mr. Metzger. There are some thirty-eight exhibits and some fifty-six schedules.

The Court: Well, wouldn't it be more practical to confer with Counsel and narrow it down to those that are objected to, and I will hear the objections and rule on them, if any?

Mr. Metzger: That would be acceptable, your Honor.

The Court: In other words, we could assume they are all received into evidence with the exception of those that are [fol. 1029] objected to, if there are some that are objected to, because this is going to take a lot of time—thirty-eight exhibits.

Mr. Burnham: There are some, your Honor, with respect to which we will have objections and, in fact, we would like to ask Mr. Boni a few questions about a few of them.

The Court: Do you know now, or do you have a list of those that would be objected to?

Mr. Burnham: I have not prepared a list, but I can tell Mr. Metzger in about ten minutes. It is just a matter of going through my book and telling him which ones.

The Court: Well, should we adjourn now to complete this?

Mr. Metzger: Well, Mr. Cox does have a specific list of objections.

Mr. Cox: Well, these objections are a different kind and some of them can be solved.

Mr. Metzger: We have had a conference, your Honor, and resolved a number of them.

Mr. Cox: For example, this one that is before your Honor now, Exhibit 2, one problem arises about that that the Government can correct, I think, by changing the heading. They say the source of this is Standard and Poor's, the price indexes of five hundred companies.

Now, they did not supply us with that material that they used but by an independent inquiry, we determined, sofar [fol. 1030] as we could, that for the period before 1957 there were not 500 companies, there were not 425 industrials, that the index was composed on a different basis.

I think what is going to have to be done with a number of these exhibits is that we are either going to have to agree on those corrections or your Honor is going to have to rule on whether they can be admitted into evidence with what we regard as incorrect descriptions.

The Court: Well, I think we can save a little time if you will spend the balance of the afternoon going over these and then be ready to proceed in the morning.

Mr. Reycraft: May I ask your Honor whether we can have the objections in writing to facilitate the correction of the exhibits, in the event they are required?

The Court: That procedure would be agreeable with the Court.

Mr. Tierney: When do you want us to do it, between now and dinner time?

Mr. Reycraft: Well, whenever you can. They have had them six months, I may say, your Honor.

Mr. Cox: If it please the Court, I think this statement may not completely disclose what the problem is to the Court. One problem here is that they gave us some exhibits, and they did not supply us, as we believe they are required to do, with the underlying material.

When we tried to check them, du Pont Company spent a great deal of time checking it, and we found a great deal [fol. 1031] of it is simply wrong. We cannot find the figures that they have on these exhibits and any of the sources they have identified.

In some cases they compute averages for four components and they get a lower average than the four components put together. I do not know whether we can straighten those things out.

Mr. Burnham: Your Honor, there is one other problem in connection with doing this in writing. With respect to a number of these exhibits, the problem is not so much what is contained in the exhibit, but what it is expected it will be claimed the exhibit stands for and proves.

It is a fact, I think, that it will come out that some of these prove quite the opposite, and as to those the objection will depend in large measure upon what Mr. Boni himself says the exhibit stands for.

Mr. Metzger: May it please the Court, as was pointed out by Mr. Reycraft, we gave this document to the defendants about six months ago and they gave us a list of objections. We, I believe, have satisfactorily resolved those objections.

Everything that has been adverted to today has been noticed to the Government less than two minutes ago.

Mr. Cox: I will do this, your Honor, I will sit down—we will sit down with counsel for the Government and agree on exhibits to which we have no objection.

I will also tell them in the course of that conference what the nature of our objections is to the rest of them.

[fols. 1032-1033] I cannot agree to do it in writing because it takes too long.

Mr. Metzger. The reason for the writing, your Honor, is in order that we may have them once and for all.

The Court: Well, with a statement for the record, I do not think it is necessary to do it in writing, unless that is a more practical way to do it.

Do you suggest then an adjournment at this time?

Mr. Cox: Yes.

Mr. Reycraft: That is agreeable, your Honor.

The Court: Court stands adjourned until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken in the above-entitled cause until Tuesday, March 3, 1959, at 10:00 o'clock, a. m.)

[fol. 1034]

Transcript of Proceedings of March 3, 1959

The Court: Proceed, please.

Mr. Metzger: I would like to report, before the witness resumes the stand, your Honor, on the results of our conference yesterday afternoon.

All parties met, and we discussed the various exhibits. We were able to agree to the extent of supplying numbers for each and every exhibit.

The Reporter's copy has not yet been marked, but I presume that we can overcome that by holding off any marking for identification of the Reporter's copy until the evening break or perhaps at noon hour.

It is satisfactory to all parties, since all parties' copies of these documents are marked identically.

As far as a presentation in bulk is concerned, a number of the defendants have interjected objections as to relevance and, as to those objections, they feel—and they go to most of the exhibits—that a presentation by the witness on each exhibit will be required.

I believe that Mr. Cox has some suggestions as to that point, and he perhaps might want to bring them up at this time.

Mr. Cox: May it please the Court, it occurred to me that although I do not wish to try to dictate to Mr. Metzger as to how he should conduct his examination, that if he began the examination by putting the ultimate hypothetical question to the witness, which I take it the testimony is directed to, stating it on whatever assumptions or hypotheses Mr. Metzger chooses, and the witness then answers that question by stating his conclusion, that that approach to the problem may serve to cut down the number of objections [fol. 1035] to relevancy; and, in any event, it is likely to cut

down the argument on relevancy, because the Court will even then have before it a standard which can easily be applied to the question of relevancy.

If Mr. Metzger wishes to adopt that procedure, which of course is a matter for his choice, I think it might serve to shorten the time that will be devoted to discussing the objections.

That was the only comment that I had to make.

Mr. Metzger: We, of course, have no objection to bringing that up at this point, although the witness will want to expand, undoubtedly, on the ultimate conclusions at the conclusion of his testimony.

So I will adopt your suggestion, sir.

Mr. Boni, will you take the stand, please?

ALFRED BONI, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination:—(Continued)

By Mr. Metzger:

Q. Mr. Boni, I believe you have answered this question before; but would you state the nature and purpose of this study?

What were you trying to reach?

A. I was trying to determine, based upon an analysis of the primary markets, whether or not the divestiture by du Pont of some 63 million shares of General Motors stock over a period of time would be feasible.

[fol. 1036] Q. And what conclusions did you reach as a result of this study, Mr. Boni?

A. Based on the study of the primary market, and not including any consideration of the secondary market, the possible extent of the foreign market, the over-all question of the impact of taxes on the need for the recipients to sell the stock, also without any attempt on my part to evaluate either the economy over the coming years or General Motors earnings potential, I did come to the conclusion that it would be feasible, taking certain or making certain safeguards, to distribute this stock without any dire consequences.

Q. Now, you referred to several things that you did not study. For example, you did not study the secondary market. Had you made such a study, what would that study have meant in relation to this study of the primary market?

A. It would obviously have to be a plus factor, inasmuch as, while I am not prepared at this time to say what the extent of that market really is, it is obviously a substantial one, and therefore a plus factor.

Q. You also said you made no attempt to determine the selling that would result from the tax impact, if any, of such a distribution on the market.

How would such a study have related to yours?

A. Well, my conclusion was essentially based on the unrealistic thesis, let us say, that all of the 63 million shares would be sold in the market. And it is unrealistic for a number of reasons: No. 1, there are a great number of corporate owners of du Pont stock who would receive General Motors—institutional investors, insurance companies, and so on, who have an entirely different tax problem—not a serious tax problem.

As for the individuals, there is no basis for assuming that [fol. 1037] every individual who would receive General Motors stock would sell his stock. No. 1, he might have cash in the bank with which to pay the tax; he might decide to retain the stock. No. 2, if he is the owner of a portfolio, it would be a matter of reevaluating his portfolio.

Implicit in the assumption that all shares would be sold immediately or soon, is the fact that every recipient would consider the General Motors stock so received as the least desirable.

Q. By that, sir, do you mean he, being faced with a need to raise capital, would not necessarily select General Motors but another—perhaps another stock?

A. Well, he would at that time have to make a judgment decision as to whether he wanted to retain the General Motors, sell some other security, or rely upon the cash that he then had in the bank. And there is still another alternative I suppose some investors would use, particularly those that own their securities outright. Assuming he felt it desirable to retain the stock, he would borrow against the stock to pay his tax, which is not an unusual procedure.

Q. You mentioned as a further qualifying factor, the earnings potential of the General Motors Corporation. In

what manner would that be a qualifying factor, Mr. Boni?

A. Well, obviously, if General Motors' position in the automobile market were to decline, if the general economy failed to continue to expand—there are many other eventualities which might make the conditions impossible.

Q. But those eventualities you have mentioned so far are wholly extraneous to the subject matter of this case. Do any of these factors that might effect that relate to the issues of this case and to the possible resolution of this case?

You mentioned that——

[fol. 1038] A. Well, I think if evidence were adduced here casting a shadow on the future of General Motors and the future of the general economy, I would be concerned about it, but I did not take those into consideration.

Q. Then aside from the extraneous factors that you have mentioned earlier, the factors relating to General Motors' outlook and the outlook for the economy as a whole, each of the restrictive factors you have mentioned would be plus factors in addition to the items you have studied in your primary study?

A. That is right. Other than taking the economy and General Motors' future into consideration, I have essentially assumed the worst. 63 million shares would have to be sold over some period of time, as I understand the present plan, over a ten-year period.

Actually, in my own report which I rendered, I suggested that perhaps the period should be extended to 20 years.

Q. What benefits would that have?

A. It would reduce the impact in any one year and might provide another force in a sense.

Q. The term overhang that you mentioned in this regard, Mr. Boni. Wouldn't you be increasing the overhang by increasing the period of time from ten to twenty years?

A. I am not sure that this overhang is entirely a negative factor.

I can also conceive it to be a positive factor for this reason: That with a large block of stock such as this to be liquidated, I think it would bring to mind to the potential investor or potential owner that here is a great big stake to somebody; that the disposers of this stock could not afford to see any serious breaks in this market; that either official stabilization of some type would probably go on or

[fol. 1039] unofficial, but in any event that this stock would have to be supported.

It is almost the same as the Treasury Department issuing a great big bond issue.

We know that all kinds of things are done to support a bond issue. We know that in terms of any secondary issue that stabilization programs are undertaken during the period of issue.

I think that if I were an investor, thinking about General Motors, I would be inclined to say to myself, my goodness with three billion dollars of securities around to distribute they just cannot afford to let this stock go down.

Mr. Metzger: I believe we could turn now to the exhibits.

If the Court please, we will refer to these exhibits by the numbers we have designated for them without having them marked since all parties' copies are in agreement.

By Mr. Metzger:

Q. Mr. Boni, before we go into the specific exhibits, I note that you have two volumes of exhibits. One is entitled Volume II and one entitled Supplementary Exhibits.

Are these supplemental exhibits that you later prepared on finding something else?

A. No. I originally, as you know, furnished you with Volume I of this report, which was essentially a narrative report of my findings.

Included in that report were a series of tables, and when I was advised that the report would not be used in that form and that it would be subject to this question and [fol. 1040] answer type of approach, I felt it would expedite, and in fact, make it necessary to include those tables as exhibits.

Q. These are tables that were originally in Volume I?

A. Yes, they were all in Volume I, and as I recall now there wasn't any addition.

Q. Are these all the tables that were in Volume I, or just the larger ones?

A. No. There are some minor tabulations which I felt could be read in the course of my testimony.

Q. Mr. Boni, turning to your Exhibit 2, Government Exhibit 296, for identification, will you please describe this exhibit, sir?

A. Before describing this exhibit——

The Court: Pardon me. How will I know which is Exhibit 296?

Mr. Metzger: If it please the Court, we will at the noon break and at the evening session mark your copy, and the Reporters' copy.

This is Exhibit 2 of the study, marked in the corner as 296.

By Mr. Metzger:

Q. Will you explain this document, Mr. Boni?

A. Yes. Before directing myself to this particular chart, I would like to explain some of the problems that had to be resolved before undertaking this chart and some of the other charts that will follow.

One of the first problems was what period of time should be used. Should we use a short period; a long period?

We finally decided, as you will find not only in this chart but in subsequent charts, that the period 1946 through May 1958 probably represented the most desirable period.

[fol. 1041] It was sufficiently long, some twelve years. It included periods of market declines, market rises. It marked the whole postwar era, commencing with January 1946.

The second problem—these are not, of course, in the order of their importance—had to do with having selected the period, with what types of interval should we use? Should we use daily data, weekly data, monthly data, annual data?

We discarded the daily data and the weekly data because any day to day analysis of market prices means trying to rationalize all sorts of random movements, special movements, and obviously daily data would not be applicable or useful here.

Weekly data presented essentially the same problem—too many erratic movements. It is impossible to explain weekly movements.

Going to the other extreme for the moment, we felt that annual averages would be unsatisfactory. They, too, would obscure movements.

Use of averages, fairly long term averages like a year in market prices could distort the situation because if you had volume movements at the end of the period in either direction, it would reflect itself in the average as being the occurrence of the year.

We next had the problem of whose data should we use. We had Standard & Poor's to choose from. We had the Dow Jones. We had stock price indices to choose from. The New York Times has an index which runs back. The Herald Tribune has an index which runs back. Barron's has an index.

We finally chose Standard & Poor's. There were many reasons to choose Standard & Poor's.

[fol. 1042] I might say as an aside that this choice of index in the final analysis is not too important, despite all the consideration we gave it for this reason: If you were to take any of the indices that I mentioned, whether it be Dow Jones or Standard & Poor's or the New York Times, and you look at the long term movements, and by movements I mean the directions, the general cyclical pattern, and so on, there is not too much to choose from. There might be day to day differences, but in the final analysis, they are not different.

Some people favor one, some people favor another. We chose Standard and Poor's first, because this was generally well regarded in the financial community, we had a subscription to Standard and Poor's.

The method of compiling the index was a consideration. Some of the other indices I mentioned are pure averages of the prices not weighted averages.

The price of General Motors would have the same weight as United Aircraft on average. Another of the averages, the Dow Jones average, is that type of an average plus a constant that they have in the average, which tends at times to distort this average. It is confusing.

The constant sometimes produces problems, and so on. Standard and Poor's average, on the other hand, is what may be termed a weighted average, I believe they term it that, and in effect takes into account the size of the equity capitalization.

In other words, what I am trying to say here is that in their index; for example, General Motors and du Pont would have much more weight because they take the price of the stock and they multiply it by the number of shares outstanding, and, obviously, when you do that with General [fol. 1043] Motors and you do it with Union Carbide or Allied Chemical, General Motors produces a bigger number and has a larger weight in the index.

It makes a lot of sense here. After all, we are dealing here with a size problem, among other things. We are dealing here with one of the largest corporations of America. I think it is more valid to look at an average which takes size into account, which Standard & Poor's does.

Q. But, sir, would not—I gather from your testimony this is a market price, so to speak, that is, if you take the number of shares outstanding by their price at the time limit, don't you come up with an evaluation based on market?

A. Yes, but in the end this aggregate is divided by the total number of shares of all of the securities in the index, so that what we get is an average weighted market price.

Q. Well, I was thinking somewhat along the line particularly of railroads and, to a lesser extent, of utilities, which have a very heavy debt commitment in proportion to the stock.

A. Well, in the composite, in Standard & Poor's Composite, the industrials have the greater weight because, for two reasons, No. 1, there are more industrial stocks in the composite and, secondly—and I think that is something you apparently tried to point out to me—the railroad securities' capital structure includes a large amount of bonds and other than equity capital.

The same thing would be true of utilities. So that in terms of the weighting, in terms of the size of the equity capital, the relative position of equity capital in the rails and utilities is shrunk so that by and large Standard & Poor's composite index more truly reflects the industrials than the others.

[fol. 1044] Q. I see.

A. Now, coming to Exhibit 296, this series is designated —rather, there are four series on this chart. One is the composite, one is the industrials, and then we have the utilities and the railroads.

In Standard and Poor's book, which I have here, Pages 4 and 5, "Security Price Index Record—1957 Edition," Standard refers to the composite as its 500 stock index.

In fact, on Page 4 it even has a footnote which says, "Monthly averages from 1926 based on daily prices," and so on.

However, if you dig further you will find that while it is characterized as a 500 stock index, and is so known, actually beginning—or, I should say, prior to, I think it is March 1957, this 500 stock index was linked with a 90 stock index which they previously conducted over many years.

I think rather than use my own language it might be well for me to read what was done here. I am reading now from the same book. No page number appears, but it is the front of the book.

(Reading):

> "To avoid confusion, Standard & Poor's has standardized on the former daily price index (50 industrials, 20 rails, 20 utilities, 90 components) from the back record; henceforth, the monthly, weekly, daily and hourly indices will be identical and interchangeable."

And I would like to underscore the word "interchangeable." What that really means is that they use the common statistical device of developing a continuous and comparable series.

It says,

[fol. 1045] "Since March 1, 1957,"

and I am quoting again:

> "when the electric brain took over, the daily composite index has been based upon 500 stocks."

I would like to dwell just a moment longer on the significance of this transition from the 90 to 500 and recall to you what I spoke about a few minutes ago, namely, that regardless of the index used, whether it be the Times, whether it be the Dow Jones averages, whether it be Standard & Poor's, if you have a representative list of stocks, it does not have to be any great big number—in my mind the Dow Jones averages, which have 30 industrials, are

just as good as any of the others which have a larger number.

So that there is nothing intricate that was done here, nothing unusual that was done here, and certainly on the basis of my experience, my knowledge of this subject, it just did not provide a problem.

Now, it has been suggested here that we ought to change the headings on such charts as refer to this exhibit. We started to do this last night but found it would involve a lot of time and could not be completed by this morning. I would be happy to abide by the Court or the attorneys or anybody else——

Q. In what way would you change the heading, sir?

A. Well, I would strike the number from the title. In other words, wherever we say "Composite," I would strike the 500. Wherever we say "425 industrials," I would strike the 425. It could be misleading without this explanation. There is no question about it.

Q. Referring then to the specific chart, Government's [fol. 1046] Exhibit 296, your Exhibit 2, what does this chart purport to show?

A. Well, that chart plots on a monthly basis the four series.

Two important things emerge from an analysis of this chart: First, a parallelism of movement that exists among the four series for much of the time; and, secondly, the divergence of movement that exists.

The fact is that this becomes extremely significant in terms of the problem that we have here, because when we analyze the cause of the divergence—for example, the largest divergence here is for the rail group, between 1953 and 1958—there is a considerable departure of level from the composite to this.

Now it doesn't take much of an analyst to explain this. I think it is common knowledge that the railroads in this period became beset by their many financial difficulties, by the fact that the general economy was reaching a peak —all things which would be reflected in the earnings of the railroads and, of course, their dividends.

What it means is that the investors recognized this fact, and this fact became manifest in the market.

By the same token, we find that the utilities and industrials moved in a parallel fashion there. There was noth-

ing particular that beset the utilities during this period, as did beset the rails; and we find a parallelism, a homogeneric movement here.

Now what this tells us is this: That there is a common denominator here, which affects these securities. This common denominator represents, by and large, interest and dividends.

We have here the situation of securities competing among each other for the investor's dollar; what it means [fol. 1047] is that the investor will look from one group to another group, from one security to another security, in an endeavor to take into account these changing conditions.

But the motivating factor there is—what will this company—is the anticipation of what these companies or these groups are likely to earn.

Now this even goes farther in the sense that we mustn't think of this security market as something operating in a vacuum.

These securities on the New York Stock Exchange compete with all the other securities on other exchanges and, in addition to the common stocks, are competing with the yields of bonds, with the yields of municipals, with the return on real estate.

This is a security market which is competing for a dollar of the investor's money. And it is also competing, as I shouldn't overlook mentioning, and which perhaps is the most important of all—it is competing with the riskless investment provided by Government bonds.

In other words, as the yield on Government bonds goes up and down, it has a profound effect on General Motors or on du Pont.

Those are the external factors here which makes earnings and dividends a common denominator.

I would like to point out one other thing here, because I think it is important to this whole analysis—that these prices reflect not only—and when I talk about earnings and dividends, that doesn't mean they are just reflecting earnings and dividends from yesterday, or the last report—this is a problem of the investor, and what makes the marketplace, security marketplace, so treacherous a place, as [fol. 1048] so many have experienced,—and it isn't only a question of the past; it is a question of anticipating what

is going to happen. It is fine that General Motors earned $5 last year; but what is it going to earn next year?

And those are the many factors which, despite the existence of a common denominator don't make this relationship perfect.

Of course, there are, I think, as Doctor Friend mentioned yesterday, variations in risk, as between an automobile stock and a chemical stock, between the chemical stock and the aircraft stock, so that they do not ascribe the same value to the same dollar of earnings.

Stated otherwise, in the parlance of the financial community, the investor wants either more or less for his money, in terms of yield.

Q. As that yield is related to risk?

A. As to what he expects to get.

In other words, if he thinks that the risk is high in one case, as distinguished from low in the other, he might be willing to take 5 per cent with the yield in a security, as distinguished with 10 per cent, merely because that particular investor is willing to accept less for his money to cut down his risk.

Now one last thing. I don't want to dwell too long on the subject here.

I am sorry—I lost my thought.

Mr. Metzger: I offer Government's Exhibit 296.

Mr. Cox: May it please the Court, may I inquire of Mr. Metzger, whether the Government intends, before this exhibit is printed as part of the record, to make the changes in the heading that Mr. Boni has mentioned?

[fol. 1049] Mr. Metzger: If necessary. If you feel that it is appropriate, sir, we shall.

Mr. Cox: I should think that it would be desirable to have those changes made, so that the exhibit will be accurate on its face and self-contained.

Mr. Metzger: Certainly, sir.

Mr. Bushby: If your Honor please, I think this is an illustration of the benefits of Mr. Cox's suggestion that Professor Boni state his conclusion and then these exhibits be offered. And as to items which were considered by Mr. Boni in reaching his conclusion, I object to their admission for that purpose. And that same applies to the other exhibits in this Volume II that I assume Mr. Metzger plans to offer—and for that limited purpose.

Mr. Metzger: The next Government exhibit is Schedule 1 in Volume II of the Boni study, which is Government Exhibit 297.

The schedules, if your Honor please, underlie the exhibits. You will find these schedules, sir, halfway through the book. They are mentioned about halfway back.

Mr. Cox: He is using our copy.

By Mr. Metzger:

Q. Would you describe briefly Government's Exhibit 297, Mr. Boni?

A. Exhibit 297 provides the data from which Exhibit 296 was compiled.

Mr. Metzger: The Government offers Exhibit 297.

Can it be adjusted in the same manner?

Mr. Cox: Mr. Metzger, to avoid repetition, my comment will apply to all of the schedules.

The Court: It won't be necessary to make a ruling [fol. 1050] each time. It is understood that all are received, except those that you want argument on.

(Said documents, so offered and received in evidence, were marked Government Exhibits 296 and 297.)

Q. Mr. Boni, will you turn to Exhibit 3 in your study, Government Exhibit for identification 298? Will you describe this document, sir?

A. Yes. This one lists the four series I described, the Standard & Poor's composite, the utilities, the industrials, and the rails.

It tabulates price this time on the basis of yield. In other words, we are now going to look at price expressed in terms of the yield. This is one way of getting what would happen if we considered dividends alone as the price of the stock.

This chart also differs somewhat from Exhibit 296 in that instead of monthly data that is being plotted, the data are plotted on a quarterly basis.

The reason for it is that so many corporations report on a quarterly basis, or, rather, have dividends that are quarterly dividends, and I think this series was more readily available.

Again, the intramonthly movements of this series would not, in effect, express a change in the dividends, but rather a change in the price, and it would not serve any particular purpose to do it on a monthly basis.

Now, once again, we find that despite the fact that the rails, because of the special conditions which I discussed before, move somewhat differently in terms of the other three series, even there we have the general conformance in the pattern.

[fol. 1051] What does take place here, what the rails are expressing, particularly when they decline—now, I would like to make one more point, one other thing that could be confusing here.

I would like to point out that the scale here of the yields has been inverted. In other words, if you will look at the left of the chart, you will find that the chart runs from zero at the top to 12 at the bottom, which is an inversion in the numbers and is usually done for this purpose for the reason that by inverting the scale in this fashion, we can essentially see in which direction the market was going.

In other words, as the market was going down, the yields increase. Doing it the other way, you would have the movements in reverse, and sometimes this permits better reading.

So as rail yields rose from, roughly, five per cent in 1955 to eight per cent at the end of 1957, it shows simultaneously that the market was declining during the same period.

One reason for the departure is, again, not the failure of the denominator, this binding denominator, but rather the fact that we have the factor of anticipation in these yields because what the investor was saying here is, never mind the fact that the rail dividends were X-Dollars. We want more for our money. We are afraid of these rails. You find that you have these divergencies occurring.

Therefore, what I said before, which may have sounded strange and contradictory, that on the one hand we see parallelism and on the other divergence, actually has great significance because it demonstrates that this binding function, this overall denominator of earnings and dividends is operating, and operating on a very rational basis.

[fol. 1052] Q. Will you explain that a bit more, sir?

A. Well, if the factor of anticipation were not involved here, and if my thesis were sound; in other words, if

everything were static you would expect that none of these extraneous factors would manifest themselves, and that X dollars of dividends would produce the price of Y regardless.

What I am trying to point out is that it is not as simple as that. It is much more complicated and that this is what one must understand if one is to understand what transpires in securities prices.

I have one other point that should be made at this time.

My attention was called to the fact this past Saturday that prior to 1952, the composite in some years is outside of the range of the other series.

Q. Does that mean——

A. And that there is obviously something defective in this chart.

We immediately got in touch with our New York office, who in turn got in touch with Standard and Poor's who made these compilations and furnished them to us, and pointed this out to them.

They checked immediately and reported back that they had found some discrepancies. They have promised by noon today they would provide us with the adjusted figures and we will be prepared to correct them.

Now, before leaving that, I want to point out the relative insignificance of this. If you will look at the two lines, what is marked here the 425 industrials or—I am sorry—let's look at the composite, which is the solid line, and look at the industrial line.

From 1952 to 1957 you will find, because of the factor I explained before, namely, that the industrials have the [fol. 1053] greatest weight, and so on, that these two lines almost coincide.

When we go back prior to 1952, go back from 1946 to 1952, you find that the lines still coincide, and all it indicates to me very clearly, and I have made other rapid checks for the purpose, is that to the extent that Standard and Poor's erred here and made these discrepancies, that they must be minute and minor.

As I have roughly estimated them, they might run anywhere from zero to nine hundredths of one per cent. I am confident at this moment that it would not change the chart per se because this chart is not drawn to such exactitude,

and so far as anything we have done here, it would not affect it so far.

We are interested here in trends, in the broad brush strokes of the trend. The fact that a number may be 3.93 or 3.98 really is of no significance here.

Q. Would you be prepared to indicate to us, Mr. Boni, a range in which you would consider any error in this composite figure to be immaterial for the purposes of this study?

A. Oh, I think anything in two decimals—Did you say material or immaterial?

Q. Immaterial.

A. Anything in the two decimal range obviously would be meaningless. I would be concerned if we got into a one per cent difference, or something like that. Even there, if you will look at this chart, changing the industrials from 4 to 5 per cent, the basic point that this chart is trying to make, that there is a parallelism of movement among these groups with respect to their yield would still be retained.

Q. Well, anything in the range, then, of about .10 or [fol. 1054] less?

A. Obviously would mean nothing in anything we do here.

Q. Would you say that the chart would be acceptable as an economic principle?

A. As an economic principle, yes, sir. For someone who really wanted to look at it for some special reason, for example, to determine whether over the long run the exact relationship among those segments here, I can conceive of a reason why somebody might want to have it, and then he would not be working with the charts. He should be working with the figures.

Q. But for any purpose in this hearing, can you conceive——

A. In this hearing, no, unless as we get these figures in this afternoon, I would be happy to report if there is anything that would destroy this thing. It is inconceivable to me.

Mr. Metzger: Then, your Honor, conditioned upon receipt of the adjusted figures for the years 1946 through 1952——

The Witness: 1951.

Mr. Metzger: (Continuing)—through 1951, in the event that the changes do not affect the principle of the study, I offer on that condition Government Exhibit 298.

Mr. Burnham: Your Honor, it seems to me that since Mr. Boni is getting corrected figures today, it is a relatively simple matter to put in a correct chart, a correct table, instead of an erroneous one. I suggest that Mr. Metzger withhold his offer and substitute a correct one, perhaps tomorrow.

Mr. Metzger: I believe, as has been indicated, your Honor, that as far as the chart is concerned, if you direct [fol. 1055] yourself to 1947, just at that one point, in the latter half of 1947, the line for the composite stocks would not change at all——

The Court: Wouldn't it simplify it if you followed Counsel's suggestion and bring in a corrected one?

Mr. Metzger: Your Honor, this chart has been printed. I concede it would be rather easy for us to change Schedule 2, which supports this chart, and merely paste over it, instead of 3.55, 3.54, or whatever it might be. But I don't think it is necessary for the purposes of this chart or any purpose that I am aware of to make a new chart.

If your Honor will glance at this composite line, 5 or 6 hundredths of one per cent will barely make a dent in the location of the composite black line. It certainly wouldn't affect the purpose for which this witness has offered the chart.

Mr. Cox: May it please the Court. I think Mr. Metzger may be right. Our trouble is we can't tell until we see those figures, and I think it is possible when we really see the correct figures we might say that Mr. Metzger's point is well taken and no change in the chart is necessary.

If Mr. Metzger is agreeable, I should think we might wait for that, and then receive the matter of the chart.

Mr. Metzger: All right.

The Court: Very well.

Proceed.

Mr. Metzger: All right. I will withhold offering this document until such time as the information is available.

[fol. 1056] By Mr. Metzger:

Q. Referring now to Government Exhibit 299, schedule 2, do I gather this also is the underlying data——

A. These are the underlying data for Exhibit 298.

Q. To what extent are they subject to change?

A. Well, as I indicated earlier, it looks like 1946 and 1947, I believe, could be wrong to the extent of 5 to 9 one-hundreths of a per cent.

Q. Is this overall, or merely as to the composite?

A. As to the composite.

Mr. Cox: This is the one you are going to correct?

Mr. Metzger: Yes.

By Mr. Metzger:

Q. Turning your attention to Government Exhibit for identification Number 300, your Exhibit 4, will you describe this document, sir?

A. Yes. This is another approach to the examination of price movements. It deals this time with the price eanings ratio of securities as disclosed by the three groups and the composite.

What I mean by price earnings here is the number of times that price is of earnings. In other words, if you had a price of ten dollars a year and earnings were one dollar a year, you would have a price earnings ratio of ten.

Now, this chart unfortunately has the same problem as the earlier chart. Upon finding that in 1946 the range of the composite—in fact it is 1946 and 1947—the range of the composite exceeded all the individual sectors, that indicated something was wrong.

Again, Standard and Poor's is developing the data and advised us that it would be ready some time this morning. [fol. 1057] However, again, if we look subsequent to 1952, the black solid line and the dotted line representing the industrials fall practically one on top of the other throughout the remainder of the period, and there is no reason to believe any different relationship of the earlier period.

All I would expect is that the solid line would come on top of the dotted line and in no way change again the underlying philosophy to be gathered from Exhibit 300, namely, there is a general pattern of the price earnings ratios conform one to the other and that this time, where before dividends acted as the denominator, earnings act as the denominator here.

Once again, the imperfection of the relationship indicates the investor taking into account not only the historical level of the earnings but his anticipation of such earnings.

Q. So how would that be reflected in price earnings ratio?

A. Well, as in the case of the rails, you will notice that the railroads throughout the period are at the bottom of the heap, which means that for the same dollar of earnings when it came to buying railroads the investor wanted and would pay a lower ratio, had less confidence where, in terms of the utilities, you will notice, which are regulated companies, with more assured income, and so on, you find that utilities throughout this chart are at the top of the totem pole.

Buyers are willing to take less for their money, as measured by earnings, for utilities than for railroads.

Q. Well, let's take a specific point, sir.

At the conclusion of 1952 do I gather then that you have to pay about 7 times earnings to buy a railroad stock?

[fol. 1058] A. In 1952? Yes, somewhere between 6 and 7. In other words a dollar of railroad earnings at the end of 1952 would bring roughly seven dollars in the market place, whereas, a dollar of utility earnings at the end of 1952 would bring roughly $15 of earnings—almost twice as much.

Q. I note that the composite in the industrials are identical at that point at about $11?

A. Well, I will give you the exact numbers from the supporting chart.

At the end of 1952, you are right, the composite is $11.03 in terms of its price earnings ratio.

Q. And will you indicate for us again the significance of these relationships?

A. Well, that the investor takes into account not only what has happened, but what he expects to happen.

Otherwise, if all things were equal, and there were no other variables involved, other than how much did the X company sell for, we would then expect that all companies with the same earnings would have the same price, or in the same relationship that a company with twice the earnings of another one would have twice the price of the other one, but it isn't so.

Q. Then at any specific point of time by referring to, for example, the price earnings ratio, you might be able to get some evidence of the relative confidence of the investor in each of the industrial groups' survey?

A. Yes, that is one measure.

Q. I see; and this is supported by Schedule 3?

A. 301 in the revised list.

Q. Which is Exhibit 301 for identification, is that correct, sir?

A. That is correct.

Q. And what is subject to change in this document?

[fol. 1059] A. The price earnings ratio for the composite for the years 1946 through 1951.

Mr. Cox: Mr. Metzger, are you about to leave that exhibit?

Mr. Metzger: Yes.

Mr. Cox: May it please the Court, I just wonder if the witness thinks that in the interest of accuracy the footnote on 301, which starts out, "Yields" for composite should read——

The Witness: I am glad you brought it to my attention. I have already changed it on my pencil copy. "Yields" is just mis-read here. It should be, "Price Earnings Ratio." It appears twice.

The first word is "yield," and then on line 3 the word is "Yield," which should be changed to "Price Earnings Ratio."

Mr. Cox: Perhaps that could be corrected.

By Mr. Metzger:

Q. It is apparent from the heading of the chart and from the body of the chart itself, however, that this is a price earnings document, is it not?

A. Yes, there is no question about it.

Q. Turning now, sir, to Exhibit 5, which I note is given in five separate portions, 5A through F—Exhibit 5A is Government Exhibit for identification 302.

Would you please describe this exhibit?

Mr. Burnham: May it please the Court, this particular series of exhibits is a series which we have serious objection to on the ground of accuracy, which we have taken up

with the Government. We may have to develop it on voir dire cross of Mr. Boni, with the Court's permission.

[fol. 1060] I would suggest merely at this stage Mr. Boni be cautioned to not interpret the exhibit, because until such time as it is introduced in evidence, I think it should not be interpreted. I think it is perfectly proper, however, for him to be asked about what it is, how it was compiled, and so forth.

By Mr. Metzger:

Q. Will you describe the exhibit, sir?

A. Well, again I think to properly understand these exhibits I would have to furnish you with some background here.

This series of exhibits were not prepared for this trial. These were prepared in the course of other assignments over a ten-year period involving the valuation of securities for different purposes.

Q. Well, would you describe the purpose, for example, for this document?

A. Yes.

These would either be for the purpose of some estate tax matter or some contemplated merger or acquisition of one corporation by another where we were employed to make an independent appraisal of the particular security that was involved.

Now, the valuation of securities is not a matter of formulae as it is a matter of assembling all of the available data and forming a judgment, a decision.

One of the decisions that is involved is how to weigh some of these factors.

We know, for example, that over the years, depending upon general economic conditions, different factors have different weights.

I might also emphasize here that when I speak of factors [fol. 1061] I recognize that there are an infinite variety of factors. It is not just a matter of saying, "These are the factors" as you measure them.

Over the years they change. For example, I recall very distinctly in the depression, '31, '32, earnings disappeared, dividends disappeared, and when you tried to find the effect of how effective earnings were, how effective dividends were, there just weren't any.

We found in periods of that time that book values often explained the price more than anything else, and, in fact, in some cases even book value did not explain it.

People were buying securities on the basis of cash in the bank. I know of many securities that——

Q. Cash that they had in the bank, or——

A. No, cash of the companies in the bank. I remember many cases where you could actually—well, I recall you could buy Chrysler, I think it was, for two or three dollars a share, and, as I recall, Chrysler had that much money in the bank.

But, when we have earnings, and as we come out of depressions, and so on, we find that this common denominator that I spoke about once more begins to take on significance, and we find earnings and dividends are important, and over time, as in this 10-year period, which these data illustrate, if we were to rank the importance of these factors, dividends, I think in every case we have here, rank first.

Mr. Burnham: Your Honor, this brings up the point that I raised. He is now saying what the conclusions are that he draws from these exhibits which we think contain inaccuracies, which should bar their admission into evidence.

Mr. Metzger: I do not think the statement made by the [fol. 1062] witness has yet gotten into what his conclusions are. He has not indicated any meaning behind the mathematical fact, and until he reaches that, I am afraid the witness is merely describing the documents.

Mr. Burnham: Well, I understood him to be drawing conclusions. If he is not, why, that is all right.

By The Witness:

A. (Continuing) Now, coming to these specific studies, as one measure, as one indicator of how a valuation should be made, we generally make a study of this kind. We take book values, earnings, dividends and try not to establish an accurate measure of how much effect they have. That is unimportant here.

The important thing is to determine which should we give more weight to, the fact a company earned two dollars in that year and paid three dollars dividend, or the reverse, or should we pay any attention to book value at all?

Q. Which should be given more weight in relation to what?

A. In relation to value.

Q. What is value in this context?

A. The value of this context is for the purpose it had when we were trying to establish what a fair market value was for a stock. In other words, what would a willing buyer be willing to pay for X security, given these facts.

Q. I am interested in your selection of dates, sir. Why, for example, do you pick February 6th, 1946?

A. These dates were not selected by us; these dates were the instructions of our client and represented either the fact that this was the estate of some decedent who died, as the first one here may have—February 6th 1946—and for purposes of their estate tax they needed a valuation of a given security as of February 6th, 1946.

[fol. 1063] I would like to point out one important thing there. At no time would this valuation have been made as of February 6th, 1946. There could be a lag of months; there could be a lag of years. For example, I checked this February 6th, 1946, in terms of the actual date on which the report was rendered, and I found the report was rendered early in 1951, five years later; which means that the work was done essentially five years later. And these will vary.

Where there is a merger or an acquisition involved, this may be a matter of weeks; it could even be days. You might say, "Well, we would like to make this merger effective as of last Monday", or the first of the month, "We would like to have a valuation as of the first of the month."

I wonder whether I could have a short recess?

The Court: The Court stands recessed for ten minutes.

(A recess was taken.)

The Court: You may proceed.

Mr. Bushby: If your Honor please, may I just make a suggestion here and say that for the brevity of the record I believe the defendants will not object to the offering of the exhibits in this book without lengthy explanation by Doctor Boni, with one or two exceptions that Mr. Burnham will mention.

It seems to me that it would expedite matters a great deal by having the offer made and stating which ones we specifically object to.

The Court: That is what I stated yesterday.

Mr. Burnham: Your Honor, yesterday at our meeting, it developed that it just wouldn't seem to work out.

[fol. 1064] There are some of these that are objectionable because of what Mr. Boni has done, we believe, with the material that he has; it does not result in an exhibit which supports the conclusion he tries to draw from it. And we would, in a sense, if we did that, shovel in this whole batch of documents, and then we would have to say, "What do you mean by this particular one," and then would have to go after him on that.

It seems to me that a connected story, perhaps with shorter lectures, would be all that we would need on this.

But I should think that a connected story would be helpful in understanding what is right and what is wrong in some of these exhibits.

The Court: Do you prefer that we proceed as we are now?

Mr. Burnham: I must confess that the way we have been proceeding this morning, your Honor, there seems to have been no progress at all.

I agree with Mr. Bushby that we ought to work out some way to speed this up.

Mr. Bushby: Couldn't you state which ones, Mr. Burnham, in this group you want to challenge as exhibits?

There are some that you will want to ask questions about after they are in and others that you will object to.

Mr. Metzger: If the Court please, yesterday afternoon we went over these exhibits one by one, and Mr. Burnham then indicated which ones he would have no objection to.

[fol. 1065] Mr. Burnham: That is correct.

Mr. Metzger: They are scattered. When we get to them, I am sure that with a brief description of what their purport is, we can carry it through without unduly burdening the Court; but as to the present exhibit, and I would say as to the majority of the remaining exhibits, some objection has been raised either by Mr. Burnham or counsel for other defendants in this case, and, while I personally would like to speed up the procedure, I believe that what I am doing is in the general line of what counsel requested.

Mr. Burnham: I might add, your Honor, that since our meeting yesterday—and this is something that I haven't had a chance to talk with Mr. Metzger about—we have

worked out something that we would like to propose to Mr. Metzger that would avoid about thirty of these even having to be offered, much less quarreling about them, because we will offer to stipulate to the ultimate conclusion which Mr. Boni seeks to draw from about thirty of these, and that will speed things up considerably.

But we are nowhere near that stage yet. I expect to talk with Mr. Metzger about that during the noon hour.

Mr. Metzger: Your Honor, I might add that in referring to the exhibits in the way that we have, we are greatly reducing the amount of narrative testimony that will be required in relation to these exhibits.

At the present coverage, we may be able to talk about conclusions only, so that there is some benefit to the present procedure, although it is not the one the Government might have selected, had it been given its choice in the matter.

[fol. 1066] By Mr. Metzger:

Q. Mr. Boni, before the break, we were discussing this Chart 5-A, and I believe that you indicated that for purposes of valuation, for example, estate tax purposes, you are given a specific date—here February 6, 1946—and asked that you determine the value of certain securities at that time; and in order to accomplish that, you must determine certain factors which you haven't discussed yet, as to the problems of valuation, is that correct?

A. That is correct.

If I may briefly summarize—I stated that we have an infinite variety of factors involved—some of them measurable, some of them not measurable—that because of the mechanism of the securities market—dividends, earnings, and sometimes book values explain not only the absolute level of stock prices, but their relative values. I think I also indicated the fact that these studies were not made for the purposes of this trial.

Now proceeding to the manner in which a specific valuation is made, and the manner in which these specific charts were compiled, we would be instructed to make a valuation of the XYZ Corporation as of a given date, and, as I explained before, that invariably was at a later date than the date of valuation.

One of the things we would do as a prerequisite to such a valuation is to make this type of an analysis to endeavor to rank the importance of the so-called measurable factors.

Q. Measurable factors that comprise what?

A. Measurable factors that serve to explain price. Having determined the measurable factors, we then, primarily, through judgment experience, take these known factors, [fol. 1067] take the plus qualitative factors into account and the minus qualitative factors into account, and come to a judgment decision.

Now, when a valuation of this kind was given to us, as an assignment, and these particular ones happened to be under my direction, I would assign the task or this particular phase of the task to a subordinate—in most cases, a security analyst—who in turn would use such statistical assistance as he required, perhaps one girl, sometimes two girls.

His assignment would run something like this: "We will have to make a valuation of the XYZ Corporation. I want you to compute the usual correlation of co-efficient."

Q. What is a "correlation of co-efficient," sir?

Mr. Bushby: I object, your Honor. There is no need here for a description of the inner workings of the office of Dr. Boni.

Mr. Metzger: If the Court please, Mr. Burnham has indicated that he has some objection as to the utilization of the data that go to make up this particular chart.

Mr. Bushby: He hasn't stated it yet.

Mr. Metzger: Certain of the propositions, certain of the methods used, are explained only in terms of how the valuation is reached; and this is a somewhat complicated subject which Mr. Boni is attempting to develop now.

Mr. Burnham: Your Honor, just so that the record will be clear about my position, we contend that the underlying data that is used is in a number of instances erroneous. We gave instances of that to Mr. Metzger and Mr. Boni at the close of last week.

[fol. 1068] Mr. Metzger: Saturday.

Mr. Burnham: So that this is not something new. I am not worried about the inner workings of his office; I am worried about the data used in compiling this material from which he tries to draw some conclusions.

Mr. Metzger: What Mr. Burnham considers to be an error, if your Honor please, is what we are to explain to be a matter of technique.

The Court: All right, proceed.

By Mr. Metzger:

Q. Will you continue, please, sir?

A. Yes. The instructions to a subordinate would be, "We need these correlation co-efficients."

I think you asked me another question.

Q. Yes. What is a "correlation co-efficient"?

A. A correlation co-efficient measures the closest relationship between two variables.

Perhaps I can be more specific here in this. In this particular case, we want to know—the price would represent one variable, earnings would represent another variable—and we term it the "correlation co-efficient," which is an abstract mathematical term to determine what that relationship is.

It enables you to gauge whether one pair of variables, or at least one variable, explains more of the variations of the second variable than the other.

For example, a perfect correlation—in other words, where one variable explains the other variable perfectly, [fol. 1069] where a ten dollar dividend produces a hundred dollar price, where a one dollar dividend produces a ten dollar price—where you would have that and have a successive number of perfect relationships of that kind, you would then have a relationship of plus 1.0.

Now that relationship could go all the way to zero and all the way to minus 1.0.

In other words, we have relationships where one variable going down is explained by another variable going up. In that event, you would find a negative correlation; and that correlation could be perfect.

In other words, if something went down and something went up proportionately, and you found by a whole series of observations the proportions were identical, you would get a perfect correlation.

Q. How do you determine the correlation between these two variables?

A. This is a mathematical formula that can be found in any textbook, if you look at Mill's or Crockton, Cowden, Ezkiel, and so on.

Despite the fact that it may look complicated on paper, as perhaps it does to some who are uninitiated in these things, it is really a very simple formula in terms of this concept, which is a very simple concept.

Q. I believe you worked that out on Schedule 4, which is Government's Exhibit for identification No. 303?

A. Yes.

Q. Which relates to this document Exhibit 5A?

A. That is right.

Q. Is this the formula in the right-hand column, sir?

A. This is the formula in the right-hand column.

Q. I note you have two columns of figures, one closing price per share February 6, 1946. How do you arrive at [fol. 1070] that figure, sir?

A. Well, as I was explaining before, this represents the data evaluation that is assigned to us. Now, the figures that go with that involve considerable judgment decision, subjective decisions on the part of the analyst.

Q. As to closing prices, sir?

A. Oh, I am sorry. You are talking about closing prices.

No, as to closing prices, there is absolutely no problem. Closing prices are taken from the Wall Street Journal, and any differences that might be found with respect to closing prices would be either typographical or sheer error. There is no problem on closing prices.

Q. You just look for each company as indicated in the Wall Street Journal for the day?

A. That is right, and it is tabulated. There is no judgment involved there. In fact, it is the only one of the variables that requires no judgment.

The reason for it is that that is what we are trying to explain. We are trying to explain those prices, so it is not a matter of judgment there. It is a matter of deciding what is the price, and let's see how we can explain why, in terms of dividends in this chart, why Allied Chemical & Dye is selling for $202 a share, whereas F. W. Woolworth is selling for $56⅞ per share.

Q. I see. Now, turning then to this Column 1, which is headed, "Annual Dividends per Share Based on Data

Available February 6, 1946," would you mind explaining to me, sir, what you mean by data available February 6, 1946?

A. That is a broad term. When we say data available, we mean that everything that was available around [fol. 1071] that date, and in certain instances particularly when we come to earnings, it could even be data after that date.

For this reason, as I explained before, prices do more than reflect the past. Prices also reflect the future.

Now, when you put down an earnings number accompanying that price, if you were to take—let's take an extreme to illustrate this. Say we are making an evaluation as of February 6, 1946.

Let us take a company that only reports annually. This is an extreme because today most companies report quarterly, but I am trying to illustrate this by an extreme.

The last available earnings report, as this is as of the beginning of the year, would be at the beginning of 1945 for the 1944 earnings actually.

I mean, it is an extreme, but it is potentially possible. It could happen, particularly in the early years when corporations weren't required to report annually, you actually ran into situations like that.

Now to take the earnings of 1944 and make evaluation as of February 6, 1946 could be realistic or unrealistic. For example, if we are dealing with a major company here, if we are dealing with General Motors, and the year 1945 from an activities standpoint for the motor industry was essentially the same as 1944, and, of course, remained constant, and so on, it might be reasonable to say, well, not much change took place, I will use the data of last year.

On the other hand, you may have had dramatic changes. The economy may have gone importantly up or importantly down. The automobile industry may have done something peculiar.

General Motors may have done something peculiar. To just coldly put a number down here would not serve the [fol. 1072] purpose at all because this price is not reflecting what happened in 1944. This price is something that is happening now.

So the analyst, as we do this—somebody may do this differently—but as we do it, we rely upon, and we are try-

ing to make a judgment decision here on these valuations. So our analyst either will take as of February 6, 1946 some published estimate, sometimes of the company, sometimes of a brokerage house, sometimes Standard—I believe Standard & Poor's have a service like that of their own—where they make certain forecasts.

There is nothing sacred about it. There is no wall here that says you can't look beyond.

Let us say a statement came out in March of 1946, or April 1946. The analyst in his discretion, and in these cases with my understanding, would adopt it, and say, "Why make the estimate? This is what this company was reflecting. This price has moved it up."

In other words, we are trying to understand what the investor is doing. We are not trying to establish a cold formula by which we say, 'well, here it is cold-bloodedly. This isn't the nature of this business.

The nature of this business is to estimate, to anticipate, and to try to form a decision in correlation analysis, whether for this purpose or any other purpose.

The Department of Agriculture uses correlation analysis. They use it in estimating crops. What does weather have to do with it? What will certain temperatures do in terms of a cotton crop, in terms of a wheat crop?

Now that analysis is done by standard procedures where, if certain of the data look unrealistic, and if you have [fol. 1073] enough observations, you eliminate the points that don't look realistic. This is particularly where you have enough observations. If you have few observations, it becomes dangerous. If you have many observations it is better statistical procedure actually. I would condemn a person who would say these were the numbers.

Now, in terms of evaluation, where we do try to be careful in terms of not going beyond the valuation date is in terms of the company itself that we are evaluating.

That is slightly different. In other words, there we try to confine ourselves, and where we are dealing with an unlisted security, we would either make an estimate of the earnings of that company as of the date of valuation or, if the company had a fiscal year which ended sufficiently reasonably close to the date of valuation, we would take it.

Now, let me come back to the dividends, which is where we really started. I am sorry to be rambling this way, but it is the only way.

Now, in dividends you have a problem. You have the problem that dividends are not a fixed thing. Some companies have a regular dividend. Some companies pay the same dividend for many years, and as a general rule that presents no problem. You take the dividend that was paid, and you know that for the last five years they paid $2.00, and there is not too much danger, although you have to keep your eyes open. You can't do it blind.

In the case of Lorillard recently when their particular cigarette went over in a big way, to take the old Lorillard dividend without recognizing that a major change had occurred within the company would be foolhardy and would not serve any useful purpose.

[fol. 1074] Q. Sir, you are talking about dividends here. You say the date is February 6, 1946, and the dividend declaration isn't until after that period. How can you determine what the stock dividend is going to be?

A. I don't determine what it is going to be. You recognize that the price must have taken it into consideration, and you make a calculated judgment at that time.

Should we analyze what we had before? It is on a quarterly basis. Should we take last year's or should we take the actual dividend that was paid, even though it came later, since this is what this price was reflecting at this particular time—not next year's, or last year's dividend, but the dividend that may be paid a month hence.

Q. You say a calculated judgment. Is this your judgment of what the dividend will be, sir?

A. In these particular cases it would be my judgment combined with that of the analyst who is working on that particular evaluation.

Q. As to what the dividend will be or as to what——

A. No, as to what to use for this particular correlation analysis. You must remember in terms of these analyses here that we were looking at these things deliberately subjectively without attempting to decide in advance what we would like to have.

We were trying to make a subjective judgment as to what the value of a given security was.

Q. Your subjective judgment or somebody else's?

A. Well, my subjective judgment in the sense of appraising what the investors would want, because my judgment means nothing in terms of this.

[fol. 1075] The important thing is what would a fair market value be for X security, which means that I have got to formulate a judgment as to what a willing buyer would be willing to pay in a given market.

Q. Well, let's take a few examples here, sir, on dividends. I note that you have American Telephone & Telegraph Company at $9.00.

The valuation date was February 6, 1946. As of that date, had the fourth quarterly dividend for 1945 been declared yet?

A. Well, you picked a perfect example. For many years the Telephone dividend was traditional and almost was, or was for many, many years, and certainly there was one that you could reasonably conclude that the investor was going to pay for that dividend on the basis of $9.00 and not something else, although if two months after the valuation and the information were available to us, we found that Telephone had all of a sudden increased its dividend to $12.00, and that the price at the date of valuation was inordinately high in relation to past experience, we would put in the $12.00.

Q. On what assumption?

A. On the assumption that the price had been reflecting the increased dividend.

Q. Well, how could it reflect this increased dividend if it had not been declared?

A. Well, because the stock market, as I tried to emphasize over and over, is not a business of looking with hindsight, it is a matter of taking the hindsight and using some foresight.

That is where the real problems come in, and that is why this is a subjective analysis and not an objective analysis. That is why two analysts will not agree.

That is why we have differences of opinion among our-
[fol. 1076] selves and even among the different services who are actually doing nothing more than reporting the dividends.

You will find Standard & Poor's and Moody's will show a different dividend rate for the same corporation on the same date.

If you go to Barron's you will find still another.

It depends upon the period. There are periods when dividend payments are very erratic. There judgment is a primary factor.

There are periods when the economy has been stable, when the earnings of most corporations have been stable, and the current dividend rate is reasonably assured.

There you have very few problems; but when it comes to erratic periods you have many problems. Now, there is still another problem that is very complicated here, the problem of extras.

An extra dividend: Now, what do you do with an extra dividend, do you include it in an earnings price ratio, or don't you?

Remember this, that when extra dividends are paid and the dividend has been declared, the investor actually knows that he is going to get this extra dividend, and he is not looking at this extra dividend as a continued source of income.

He knows that he is paying extra, he is making a capital investment, he is going to get some of his capital investment back shortly. Many people, for example, who are needful of income, where you have trust funds operating that need income, they actually deliberately buy securities the day before the stock goes up with a view to getting that dividend income into the trust fund.

Well, there are other judgments that are involved there, [fol. 1077] and that is that if they are evaluating income from a long run standpoint, they must then take into account, "Is this extra dividend going to be repeated, or is it a windfall?"

Q. In other words, is an extra an extra?

A. When is the extra an extra and when does it represent a step up to new levels? These are things the management itself does not know very frequently. In their own directors' meetings they may decide, "Well, let's call it an extra, and let's hope we can continue it," but there is no assurance.

So the end result is that every one of these numbers, even when we accept the number that was a variable in

Moody's or in Standard's, that is in itself a subjective judgment.

When we take the $9 of dividend of American Telephone, that you mentioned, that is a judgment; it is not just taking the number out of a page of the book and saying, "This is $9."

Q. Yes.

A. And when you check through here you will find that unless you are prepared to sit down with the people who did it, reconstruct the basis of the decisions that were made, that you get what may appear to be unexplainable answers. It is very hard to say.

Q. You said analysts might disagree as to this; did you mean they might disagree as to the technique or specific dollar figures?

A. No, the specific dollar, because the dependent variable here is price. In other words, that is what we are trying to explain.

We have got to explain it, and to try to explain price purely objectively in the stock market is not only foolhardy but ridiculous. You just cannot explain price entirely objectively.

We can account for certain portions. We know that a [fol. 1078] ten dollar dividend of a good company—we know that that company isn't going to sell for $5.

We know that, but when you ask me whether it is going to sell for $100, or whether it is going to sell for $90 or whether it is going to sell for $150, it becomes a matter of deciding whether that price on that valuation date was reflecting something that isn't reflected in the published data, or whether it was merely some happenstance.

We go along and that is why the business of investment counsel is a very hazardous business.

Q. Mr. Boni, turning now to Page 2 of this Government exhibit for identification, 303, I note you have the same formula developed on the right hand column?

A. That is correct.

Q. And the same Column 2, "Closing Prices"?

A. That is correct.

Q. And the same heading for Column 1, "Annual Earnings per Share Based on Data Available February 6, 1946."

What problems go into the makeup of the data available as of any given date of earnings?

A. Well, you have the same problem. You have the same problem if you use something of the past.

What do you do with the latest data? Where the company reports on a quarterly basis, do you annualize that quarter? Do you take the three quarters into consideration and compare them with the previous three quarters to see if there are some changes?

There are endless things that you may or may not do, depending upon—I hate to say this, but depending upon what you had for breakfast that morning.

Then you have the other problems. You have other problems that arise when you are doing this. Many cor- [fol. 1079] porations show non-recurring items on their operating statement.

Q. What is a non-recurring item?

A. Well, a windfall item—they sold a piece of property or they sold a security.

I can think of an unusual one that I recently went into where one oil company carried a security on its books for $59,000 and we found that the current value of that security was $29,000,000.

Q. Yes.

A. You just cannot disregard things of that kind. You have got to consider them. It is a matter of judgment. One analyst will say, "Let's not touch it." The other one will say, "We ought to make an adjustment."

Again, we must think of the end use of this, how much weight are we giving to these things. These non-recurring items are such important things that the correlation co-efficients, despite the imposing array of numbers and the imposing formuli, will be recognized by the good analyst as just another tool.

To read that tool, as far as I personally read that tool, I am not interested that that co-efficient is .8410. I am interested in the fact that the co-efficient correlation for dividends is .8410, and at that particular date the correlation co-efficient for book value is .52.

What does that tell me? It tells me immediately that, "Look, do not pay too much attention, if any at all, to the book value of that company on that date."

What you have got look at are the dividends or the earnings, depending on how these things fall.

Q. Well, let's look at one more here, sir, the specific example on earnings. Choose one as to which one of the defendants raised an objection. For Eastman Kodak Company, you list annual earnings per share as of February 6, 1946, of $13.06.

[fol. 1080] Now, those were the earnings for the year 1945 which was not reported until sometime later in March of '46. How do you justify utilizing those figures when you are talking about data available February 6, 1946?

A. Well, I obviously do not remember how that decision was arrived at, but I can hypothesize the reasoning that was applied at that particular time. Eastman Kodak——

Mr. Burnham: Your Honor, I object to this hypothesizing as to the reasoning.

By Mr. Metzger:

Q. What reasons would you generally——

A. Well, we would look at the $256.00 in relation to the previous years' earnings which, as I recall, were shown to me to be nine dollars and something, and looking at some earlier data we would find that the $256.00 was obviously not reflecting the nine dollars but reflecting some higher figure.

We had the decision to make at that point, assuming there were some, should we take some estimate at that time or should we assume that the stock market knew what it was doing and was reflecting this $13.00 earnings report.

Remember, there are leaks in these things, aside from everything else. Maybe that is not a good term and I hope you will accept it colloquially as an expression—but these reports that you mentioned Kodak issued in March—there are always insiders in the corporation, and by that I mean there is an Accounting Department, there are executives.

We have represented clients many times when I was aware of earnings before they were published. There is nothing wrong about that. Time and time again for one reason or another these things are reflected and then you [fol. 1081] do not have to be an insider, because, again, as I pointed out before—

Well, let's go to General Motors, since we are talking so much about General Motors. Monthly production, weekly

production, weekly sales of automobiles are available and every analyst on Wall Street is making projections of General Motors before they come out.

Q. Are these projections published?

A. Of earnings that may be anticipated on the basis of current data that are available. Now, for anyone to make an evaluation of General Motors based upon last quarter's report, without taking into account particularly that you have a seasonal business, and so on, what is going on now, is just foolhardy.

It does not make any sense. That is what these figures are here in summary. They are an attempt. They are a subjective analysis which happened to show—here we have an interesting event here:

Whether these numbers are fully accurate, whether these numbers are fully accurate; whether some of them, some of the dividends are taken on the declared basis; whether some of the extras are included or excluded—we are only interested in one thing here and that is why I brought them here into this case, because I thought it was most interesting that here we had six different observations taken essentially at random because we had nothing to do with the selection of the dates, and we find that dividends ranked highest—ranked highest, and never mind the correlation co-efficient, but that——

Mr. Burnham: Your Honor, excuse me, but I now object because he is now doing the very thing I asked he not do until we found out whether these were admitted, namely, he is drawing conclusions from these exhibits that he has been talking about.

[fol. 1082] They have not been offered in evidence yet.

Mr. Metzger: I will direct another question to the witness, your Honor.

The Court: Very well.

By Mr. Metzger:

Q. Mr. Boni, turning to page 3 of this chart, again we have the same formula, the same closing price per share, but now we are relating it to book value.

You see here a different heading for book value: "Book Value Per Share as of December 31, 1945."

How was this arrived at?

A. You mean why does it differ from the other heading?

Q. Yes.

A. Well, from experience in these periods—a book value is not a fluctuating thing from day to day.

Trying to estimate current book value particularly when we know, as we do here, that the effect upon price of book value is so limited, we take the latest balance sheet that is available.

Now, there you also have another problem in that where companies report their operating statement on an interim basis, it is rather a rare thing for them to report their balance sheet at the same time.

In addition to that—very often a report is rendered purely on an earnings basis, which is a preliminary report, and then the book value comes out, very often weeks later.

In other words, they are not published simultaneously; you get a preliminary report. So that for those reasons alone, a book value is not too important.

There are other mechanical problems determining book value which also make for a subjective judgment. Every [fol. 1083] company of any size will have reserves, will have reserves for contingencies.

Immediately the question to the analyst is, "What do we do with those reserves? Are they part of the book value? Are they real reserves? Should we add them to the equity or should we not add them to the equity?"

You have a judgment decision. Again, every one of these variables has an important element of judgment. Then, when you get all through, when you get all through and look at these scattered diagrams, which I will describe for you in a moment—again the analyst must apply judgment, because he looks at these points and these points, which to an experienced analyst have meaning.

What is their dispersion? What if one point is way out of line? Is it habitual for that company to be out of line?

Then he has got to bear in mind—then the skilled analyst must then take into account what his judgment decisions were.

In other words, if Eastman Kodak, just to stick to one example, on that particular scatter, turned out to be way out of line, then the analyst immediately is put on notice, "Your judgment, Mr. Analyst, may not have been so good," because the factors are so much out of line, whereas, in

the past Eastman Kodak has always been in line, may have something to do with your judgment.

Q. What would you do if it were way out of line?

A. I would not do anything about it. I would just take into account as a judgment factor that I have got a correlation co-efficient factor here that is not so reliable because I have used some judgment factors that aren't so good. [fol. 1084] Then I would give it a plus or minus sort-of evaluation that maybe I should not have gone that far, because, I remember that valuation is not a matter of formulae.

The Court: The Court will now recess.

(Whereupon a recess was taken in the trial of the above-entitled cause to 2:00 o'clock p.m. of the same day, Tuesday, March 3, 1959.)

[fol. 1085] Before Hon. Walter J. LaBuy, Tuesday, March 3, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

The Court: Proceed, please.

Mr. Metzger: Your Honor, before recommencing with this witness we have a motion on stipulation for an order regarding the Government's testimony.

The Court: A motion on stipulation?

Mr. Metzger: Yes, sir.

The Court: The motion is granted.

Alfred Boni, a witness called on behalf of the Government, having been heretofore previously sworn, resumed the stand and testified further as follows:

Direct Examination:—(Continued)

By Mr. Metzger:

Q. Mr. Boni, just before we recessed for lunch, you had just completed your discussion of Schedule 4, which is Government Exhibit for identification 303, in support of

Government Exhibit 302, which you designated Exhibit 5-A; but before resuming discussion of that—

Mr. Boni, this morning in our discussion of Exhibits 3 [fol. 1086] and 4, Government Exhibits 298 and 300, the point was raised that there was some discrepancy in the figures for the years 1946 through 1951.

Have you since ascertained what that discrepancy is, if any?

A. Yes, I have.

Q. Without reading the differences that were found by Standard & Poor's in correcting their previously reported figures, what is the extent of the disparity as an over-all proposition?

A. I think that the largest disparity was in the third quarter of 1946, when we had a disparity of seventeen hundredths of one per cent.

Q. On an average, what would it run, about?

A. I don't know. About eight or nine hundredths of one per cent.

Q. As you expected this morning?

A. It is less than I expected, actually.

Q. Would this make any significant difference in the utilization you have made of these charts, Exhibits 289 and 300?

A. No, it would not.

I am answering now with respect to 298.

Q. Now with respect to 299 and 301, the supporting schedules for Exhibits 298 and 300, will you make these corrections and insert them in the record?

Can you make these corrections for the Composite 500 Stock Index?

A. When you say, can I make—I don't quite understand what you mean.

Q. On the Court's copy, the record copy of this exhibit?

A. Yes, we can. I have an assistant here who would be happy to do it.

Mr. Metzger: Subject to these additions, I offer Government's Exhibits for identification, 298, 299, 300 and 301.

[fol. 1087] Mr. Burnham: Your Honor, the witness very carefully stated that he was answering with respect to 298;

I would be interested in his answer with respect to 300. I don't know whether it is the same or not.

Mr. Metzger: You have no objection to 298 and 299?

Mr. Burnham: In the light of the witness' statement about 298 and his assurance that he will correct the Court copy, I would like to see a copy of the corrections in my file, too.

Mr. Metzger: I offer Exhibits 298 and 299.

The Court: It is understood that they are all admitted, except those where there are objections and argument.

(Thereupon said documents so offered and received in evidence, were marked Government Exhibits Nos. 298 and 299.)

By Mr. Metzger:

Q. Now as to Exhibit 300, Mr. Boni, directing yourself to Exhibit 300, and supporting Schedule 301——

A. Yes.

Q. (Continuing)—what is the extent of the change brought about by the corrected Standard & Poor's figures?

A. The pattern remains identical and, as I anticipated this morning, the composite is now below the industrials—slightly below the industrials, instead of being above. And as was indicated this morning, the biggest difference, such as it was, was in 1946; and when we get into 1947, and so on, I don't think it would even change the plotting on the chart.

Mr. Cox: Does that mean the plotting has to be changed for 1946?

Mr. Metzger: Yes, in order to conform with your request this morning, sir.

[fol. 1088] Mr. Cox: Wait just a minute, please.

Mr. Metzger, why don't you correct the table and put it in, and we won't ask that you change the chart? Because the deviation between the chart and the table can be determined from the table.

Mr. Metzger: Except of the first year.

Mr. Cox: It can be determined from the table anyway. It is only one year.

Mr. Burnham: It is satisfactory to me, your Honor.

Mr. Metzger: Fine. Thank you.

We offer Exhibits 300 and 301.

(Whereupon said documents, so offered and received in evidence, were marked Government Exhibits Nos. 300 and 301.)

By Mr. Metzger:

Q. Now returning to Government Exhibit for identification 302, Mr. Boni, will you explain what these diagrams are?

A. Yes. These diagrams are commonly known as scatter diagrams; and in each case, as in 302, it has three sections, the first section dealing with dividends, the second section dealing with earnings, and the third section dealing with book value.

You will notice that each section shows the closing price on the vertical axis and shows the particular variable that the points of relationship are being related to in the horizontal axis. In other words, you have your dividends, earnings, and the book value on the horizontal, and the closing price on the vertical.

The way these points are in relationship are plotted—

Let me backtrack a moment. Each one of these circles [fol. 1089] is a point of relationship. The number beside the circle represents the name of the company.

Q. Let us take an example, sir.

A. All right.

Now let us take the one at the extreme left. The extreme point at the top is a circle with a "10."

Q. What company is "10"?

A. "10" is Eastman Kodak Company.

Q. How do you arrive at that company?

A. What we do—

Q. Mr. Boni, how do you arrive at that company? How do you know that "10" represents that company?

A. Well, in the supporting schedule, or supporting Exhibit 303, the numbers are tabulated—rather the names of the companies are tabulated, I think, in alphabetical order, and a number assigned to them.

Q. What number is number 10?

A. Number 10 is Eastman Kodak Company.

What this shows is that Eastman—we will go back to the supporting schedule—Eastman Kodak has a price of $256.

Now if you look at the vertical axis, you will notice at the top that you have $240, $280, $256. It should be a straight line from the circle "10."

Then having found that point, we then find the dividend from the horizontal axis, the dividend being six and one half dollars; so that by extending the horizontal axis, and the vertical, where they meet is the point of relationship for Eastman Kodak between closing price and annual dividends for that particular point.

Q. That is as to dividends, and I presume the same relationship follows for earnings?

[fol. 1090] A. The same would apply with respect to earnings and the same would apply with respect to book value.

Q. And the earnings would be about $13.00 on the chart?

A. Yes, visually $13.00. The book value would be in the neighborhood of $90.00.

Now, this is done for each of the thirty companies.

Q. And when you have them down on the chart, what does it mean?

Mr. Burnham: Your Honor, there again, I object until they are offered. I object to stating what they mean, and when they are offered I have an objection to the exhibits.

Mr. Metzger: If it please the Court, I am not now asking him what the significance of the exhibit is. I am merely saying if when you put a group of numbers on a chart of this type, then what? What is the next step in determining your end result as a matter of technique rather than any specific application to this case?

The Court: Overruled.

By Mr. Metzger:

Q. Will you continue, sir?

A. Yes.

Well, first, we look at the scatter and see whether there is any systematic relationship. If you look at the left scatter, you can visualize drawing a line through those points, and as a general proposition you will find that as the dividends increase, in other words, as the points move to the right, the price increases, which is what you would expect.

Now, to take the other extreme, if you will look at the right side where we have book value, you will find that the

scatter is a very wide scatter. If you were asked to draw [fol. 1091] a line of relationship, a line there that would fit all, you would find it very difficult. You would find just by eye, oh, any number of lines might seem to fit this.

You could really do these visually, if you wished to, without going through the fancy arithmetic, when you get two extremes like that. However, when you get, as you have here, the dividend and the earnings, there it would be very hard visually to say which is a better scatter than the other. It takes going through the arithmetic to get it—

Q. So, how do you plot this line you have referred to?

A. You don't plot the line. Well, you can. You can draw in a line, but I mean, you read these things by experience, and you can tell. I could tell pretty quickly that a line fitted through the first and second is a fairly reasonable line, but if you ask me to draw a line in the third one, I would find it almost impossible. I could draw a half a dozen lines that would seem to fit, and then it is reflected in the coefficients when you compute them.

There is practically no difference between the first one 86.20 and the second one 84.10.

Mr. Burnham: I renew the objection about interpreting the exhibits. If he wishes to offer them, we can talk about the objections.

By Mr. Metzger:

Q. Then your co-efficient of correlation is a statistical formula showing the relationship between these two functions, is that correct?

A. That is right.

Q. Is this a normal statistical technique?

A. Yes. It is commonly used. It is very elementary.

[fol. 1092] Q. Is it one that is a normal tool of your profession?

A. That is correct.

Q. Is there any distinction in technique between Exhibits 302 and 304, for instance, Mr. Boni?

A. No.

Q. And Exhibit 306?

A. No, it is the same.

Q. Exhibits 307 and 308?

A. No, it is the same.

Q. Exhibits 310 and 312?

A. They are all the same.

Q. And the same thing would apply to the supporting schedules?

A. That is correct.

Mr. Bushby: You haven't finished with the schedules, have you? I think he has explained the rather plain things on these schedules, but he hasn't explained what to me is the most mysterious and interesting part of the schedules, the right-hand side, which shows symbols in a foreign language on it, and all kinds of things.

Mr. Metzger: I will go over that again, if you prefer.

By Mr. Metzger:

Q. Mr. Boni, referring, for example, to Government Exhibit 303 for identification.

A. Yes.

Q. What is the material contained in this section?

A. It is essentially the formula and calculation of the co-efficient of correlation.

Q. Without going into mathematics or anything of that type——.

Mr. Bushby: Oh, I think he should.

By Mr. Metzger:

Q. (Continuing) What type of formula is this?

A. Formula for determining the relationship of these two variables, that is, dividends at price per share and [fol. 1093] price per share based upon these two sets of figures. We have determined——

Q. This a linear relationship?

A. This is a linear relationship.

Q. And this formula is a standard formula for determining the linear relationship between two factors?

A. Yes, it is. You will find it in any statistical text book.

Mr. Bushby: What does the symbol mean? It shouldn't be left a mystery to the Court.

Mr. Metzger: I believe that is a proper subject for cross examination. If counsel has determined from his own statistical people that there are any errors which we have not

been informed of at this moment in the utilization of the tables, I think they are free to bring them up.

At this point, the Government offers Government Exhibits 302 through 313.

Mr. Burnham: Your Honor, I object to the admission in evidence of these exhibits because it is apparent from the testimony of this witness, in response to Mr. Metzger's questions, first of all, that he has no knowledge at all about the particular numbers that appear in Column 1 on each of Exhibits 303, 305, 307, 309, 311, and 313, which are the exhibits that are the underlying exhibits.

Moreover, he has testified that the heading does not properly describe what is there. The heading says Annual Dividends—I am taking as an example——

Mr. Metzger: I beg your pardon——

Mr. Burnham: Just a moment. Government Exhibit 303 for identification, Schedule 4, Pages 1 to 3, Annual [fol. 1094] Dividends Per Share Based on Data Available February 6, 1946, is the way it is headed.

The witness testified that it is a subjective determination reached by some unnamed analyst two or three or five years later. I think it was five years later, early in 1951, based in part on data available after that date.

The source was not the indicated source. The indicated source was Moody's Investors Service and Standard & Poor's Corporation Records.

He told us from the witness stand that this was based upon leaks, upon market hunches, on gossip on Wall Street, material that brokers may issue.

The exhibits just are not what they purport to be, and there is no statistical validity to the figures because he has said that he doesn't know where they came from.

Mr. Metzger: May it please the Court, in relation to the point just raised by Mr. Burnham, the witness did not testify that the information on this page came from that.

The witness testified that the information available to the investor at that time might have come from that source, and for that reason he selected the data which may have officially become available at a later date, but which was currently available to the investor.

This is a statistical technique for determining the valuation.

The witness submitted that this was done under his supervision and direction, in his office; that he applied his own techniques to it; that the particular items in these ex-
[fol. 1095] hibits were done under his direction, but that he did not do each one, as you would anticipate he would not.

There has been no indication on the part of counsel that anything the witness testified to is not the normal statistical technique.

Counsel has not said that there was anything wrong with it. He merely objects as to the subjectivity.

The Court: You wish to be heard?

Mr. Burnham: Your Honor, I think that perhaps I had best ask the witness about three questions on one of these, and it will make it apparent that my objection is well-founded, if I may have the Court's indulgence.

The Court: You may.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, will you turn to Government's Exhibit 303, page 103? That is Schedule 4. Do you have it before you?

A. Yes, I do.

Q. I call your attention——

Mr. Tierney: Does your Honor have that?

The Court: Yes.

By Mr. Burnham:

Q. I call your attention to the third company there, the American Smelting & Refining Company.

A. Yes.

Q. What is the figure which you have entered on this exhibit as the annual dividend per share based on data available February 6, 1946?

A. $3.00.

Q. What is the source of that figure, Mr. Boni?

A. It says "source" here. It would be either Moody's or Standard's.

[fol. 1096] Q. Which one?

A. I would not know without tracing it back.

Q. Do you have those source materials here with you?

A. No, I do not.

Q. Mr. Boni, if I tell you that those source materials were checked and that figure $3.00 does not appear in either one as of data available February 6, 1946, would that surprise you?

A. No. There could be any number of explanations.

Mr. Metzger: The witness has already explained that proposition, if the Court please.

The Court: Well, I think they should be received, and you will have an opportunity to cross-examine, Counsel, and develop any errors.

(Said documents, so offered and received in evidence, were marked Government Exhibits 302 through 313.)

Direct Examination—(Continued)

By Mr. Metzger:

Q. Mr. Boni, turning now to the next exhibit, which is Exhibit 6 in your Volume 2, or Government Exhibit for identification 314—what is the significance of this exhibit Mr. Boni?

A. This exhibit sets forth on a monthly basis a comparison of the Standard & Poor's Composite Index of Securities with the chemical group, excluding du Pont, and with the automobile group, excluding General Motors.

Q. And what does it show in relation to these—about these groups excluding General Motors and du Pont?

A. I think perhaps to fill this in I ought to read into the record the names of the companies that are involved in this chemical group, I have them here.

[fol. 1097] This group is comprised of eleven chemical stocks—I am sorry, that includes du Pont; the group that we have used here is made up of a group of ten stocks.

The way these industries are compiled, even though there are ten stocks, they are not necessarily the same ten stocks over the period for various reasons, good reasons, as a matter of fact. It is common practice in the maintenance or maintaining of these indices to make substitutions from time to time.

The first one of the group is Air Reduction. That came in on January 2, 1916.

The second one is Allied Chemical——

Q. Would you speak directly into the microphone, Mr. Boni?

A. (Continuing) Allied Chemical is the second; American Cyanamid the third; Columbian Carbon is the fourth, Commercial Solvents is the fifth; Dow Chemical is the sixth; Hercules Powder is the seventh; Montsanto Chemical is the eighth; Olin Mathieson Chemical is the ninth and Union Carbide is the tenth.

Q. Did you plot this chart from original figures computed by yourself, Mr. Boni?

A. Yes. Let's see now. The composite comes from Government Exhibit 297.

Q. Well, the source of the automobiles and the chemicals appears to be Schedule 10, which is Government Exhibit for identification 315, the source of which is listed in Standard & Poor's trade and securities statistics for the years 1957 and '58; therefore, this material was original with the Standard & Poor's Company, was it not?

A. That is correct.

Q. And you merely plotted their statistics for this?

A. That is right; and 315 contains—Government's Ex- [fol. 1098] hibit 315 contains the data for plotting the chemicals and plotting the automobile group, and Government Exhibit 297 contains the data for the composite.

Now, as to what is shows, these three series are plotted again on a monthly basis from January, 1946 to——

Q. Before you get into that, Mr. Boni, will you read into the record the composite companies forming the automotive index?

I believe you can find that on page 15 of your prepared documents?

A. Yes. The first is the American Motors. It was in the average since May 5, 1954.

Prior to that, Nash Kelvinator and Hudson Motor Car were in separately. It includes Chrysler and it includes Ford, which is in the average since August 31, 1956, and it includes the Studebaker-Packard Corporation, both constituent companies, in the average separately prior to October 6, 1954.

Q. At which point they merged?

A. At which point they merged.

Q. Thank you.

Now, referring yourself again to Government's Exhibit for identification 314, what does this show as to the chemical index in relation to composite stocks?

A. Well, it shows very obviously the close relationship between the chemical industry and the composite industrial index.

Here once again we have a parallelism, or we have an industrial group, a chemical group which is one of the—outstanding successful industrial groups recognized by most investors with one of the strongest potentials among investments and, as might be anticipated——

[fol. 1099] Mr. Metzger: Before you continue, sir, getting into the specifics of the situation I offer Government Exhibit 314 and 315.

(Said documents, so offered and received in evidence were marked Government's Exhibits 314 and 315.)

By Mr. Metzger:

Q. Would you continue, Mr. Boni?

A. I think I started to say that, as might be anticipated, you find a strong parallelism between the movements of the chemical group and the movements of the composites.

Q. Why is the movement of the chemical group as a whole below that of the composites?

A. Well, these are index numbers. The fact whether it is higher or lower has no significance.

Q. Well——

A. The only thing you can see from this chart is the fact that the amplitude of movement was essentially the same until late in 1957 and 1958 when the industrial stocks did somewhat better than the chemical stocks.

But I am now looking at this thing with very broad brush strokes.

What impresses me here is the strong parallelism of movements between these two series.

Now when we look at the automobile series, on the other hand, we find an entirely different thing. We find between 1946 and 1953 they moved in parallel, but commencing in 1953 you have for 1953 and 1954 a complete divergence of movement.

Then commencing again at the end of 1955 you have automobile securities moving sharply downward, whereas,

[fol. 1100] the composite and the chemicals were moving across, so to speak.

Q. The point is——

A. Well, again, this is most significant in indicating how the market takes into account earnings and dividends.

Now, in this group, which I read to you before, we had Studebaker-Packard, Nash and American Motors, whatever it is. These are the companies that everyone expected to go out of business unless they merged, unless they were reorganized, unless something happened.

In addition to that, as I will show in a moment, the other remaining automobile firm of any consequence in this group, since it excludes General Motors, is Chrysler.

If we examine what happened to Chrysler in this period we find the complete explanation for the deterioration of this automobile group during this period, reflecting a general economic circumstance which indicates—not only indicated, but which resulted in profits being reduced, profits being converted into losses, and although I am not familiar offhand with the dividend record of these companies during this period, I am quite sure without looking that the dividends were curtailed or not paid at all.

Certainly investors would be anticipating curtailment of their dividends in the light of their performance.

Would you like me to go on and explain the Chrysler situation?

Q. No, I think that covers the subject fairly well, Mr. Boni.

Now, would you refer to Government's Exhibit for identification 316? I believe you will find that in that——

A. Yes, I have it.

[fol. 1101] Q. What does this document show?

A. This document tabulates the quarterly share of Chrysler in the passenger car market for the years 1952 through 1954, and substantiates the price behavior— It does not substantiate but tends to explain the price behavior of the automobile group as plotted in the earlier exhibit.

Now, you will notice that in 1952, measured by passenger cars produced—and this is all domestic production—Chrysler's share of that market was——

By Mr. Metzger:

Q. Before you get into "Share of the market"——

A. By "Share of the Market," I mean Chrysler's production as a percentage of total production in the United States.

Q. Before you get to that, sir,——

Mr. Metzger: I would like to offer Government's Exhibit for identification 316.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 316.)

By Mr. Metzger:

Q. Would you continue, sir?

A. Going back to 1952, you will notice that Chrysler's share of the market was 23 per cent, 22 per cent, weakens somewhat in the third quarter of 1952, and then in the fourth quarter was restored.

When we get over to 1954 where, you will recall, automobile prices weakened, there you see what I had in mind. Chrysler's share of that market now dropped to 12 per cent in the first quarter of 1954, 12 per cent again in the second quarter, and seven per cent of the market in the third quarter, and recovered somewhat in the fourth quarter of 1954.

[fol. 1102] Q. Would you refer now to Government Exhibit for identification 317, Mr. Boni?

A. Yes.

Q. This document lists two indexes, and actual and adjusted closing stock price for General Motors common stock for 1946 or 1958, is that correct?

A. That is correct.

Q. Before you get into that, Mr. Boni, that is supported by Government Exhibit for identification 318. Do you have that?

A. Yes.

Q. Now, calling your attention, Mr. Boni, for an example only, to January of 1946, in the column headed "Adjusted," you have 13.312. How do you arrive at that figure, on Government's Exhibit 318 for identification?

A. That was done by taking into account the stock splits which occurred in 1950 and the stock split that occurred in 1955.

Q. Is that a matter of simple division?

A. That is all it is, yes. In other words, so many shares were issued for an original share. That happened twice; and you merely find out what that was and what has happened.

Mr. Metzger: I offer Government's Exhibits for identification 317 and 318.

(Said documents, so offered and received in evidence, were marked Government's Exhibits Nos. 317 and 318.)

By Mr. Metzger:

Q. Mr. Boni, would you tell us the purpose of this chart, Government's Exhibit 317?

A. Yes. This initiates a series of exhibits which followed, in which I have examined intensively, the price behavior of General Motors in this period 1946 through [fol. 1103] May, 1958; and the purpose of this first exhibit is to merely take into account the stock splits, so as to have a comparable series, which is the bottom series, and which shows, without comparison, just as a matter of providing a frame of reference, that between 1946 and 1949 General Motors pretty much moved in a straight line. Commencing in 1950, it moved up again until the end of 1952, dipped slightly again in 1953, moved to a new high in 1955, and then with the deterioration of the automobile market, and so on, which commenced about that time, you see a slight downward decline.

Q. Referring now to Government's Exhibit 319, for identification,—that is Exhibit No. 8—would you describe this document, Mr. Boni?

A. Yes. This compares the movements of General Motors as adjusted for the stock splits with the composite industrial index; also for the period——

Q. And the sources of this stock are already in evidence, I gather, as Schedules 1 and 11?

A. Yes, and are now Government Exhibits 297 and 318.

Mr. Metzger: I offer Government's Exhibit 319.

(Said document, so offered and received in evidence, was marked Government Exhibit 319.)

Q. Mr. Boni, would you tell us what this exhibit is meant to show?

A. This exhibit compares movements of General Motors and the composite group of stocks for the period 1946 to 1958, and shows how closely General Motors moves with the market as a whole. General Motors has more amplitude on the up side, I don't attach too much significance to it; I would expect it, because where we are dealing with 500 stocks or their equivalent, and we are dealing with a [fol. 1104] single stock, I would expect more volatility in the single stock than in the average, regardless of the number of stocks in the average.

Q. Referring to Government's Exhibit for identification 320, Mr. Boni, what is this chart?

A. This chart is a further intensification of the analysis of General Motors' price movements for the period 1946 through 1958.

Q. I note, sir, that you have "Adjusted Price," which we can relate to, I presume, Government's Exhibit 319. Your figure for "Adjusted Price" on this document can be related to—

A. Yes, it would be the same.

Q. Would you explain the other figure?

A. Yes. The other, we have taken the analysis one step further. Now we have taken the adjusted price and we have deflated it by a general stock index.

Q. How would you do that?

A. Let me explain that. We know that stocks move sympathetically, one with the other—I mean, we also know that price levels are a factor; and what we are trying to say here now is taking out of General Motors' movements the effects of the general changes in the price level; and what we have done here, in effect, being that the Standard & Poor's index is on the 1941 to 1943 index basis, we are in effect now looking at the price of General Motors in terms of 1941-1943.

Now, if you examine these two series, you will see what that really means. No. 1, you will notice that the great big rise in General Motors, as reflected in the adjusted price, no longer takes on that great big upward surge; instead of

the great big upward surges that you see in the adjusted prices of General Motors, you now see a creeping movement upward, commencing in 1946 and ending in 1955; and then a somewhat creeping movement downward.

And we now see actually what was transpiring in the movements of General Motors, having eliminated the general movement.

[fol. 1105] Now the next thing that was done on this chart —I was interested to find out two things: (1), to see what happened to General Motors stock when it had secondaries, when it issued new stock. I also wanted to see what happened to General Motors stock in terms of the present litigation. And you will find on there—let's see—you will find nine different points that have been marked, and let me start with the points reflecting these splits; and then let me take those dealing with the litigation separately.

Q. Before you attempt, Mr. Boni, to make any probative statements regarding these dates, what are the dates?

A. The first date here is the United States Government filed suit against du Pont, June 30, 1949.

The next one is the two-for-one split, General Motors.

Q. Was that the date the stock was split, September 27th?

A. No. I think we used the date on which it was approved by the stockholders.

Q. All right.

A. September 27, 1950.

The next one is the trial against du Pont, which started November 18th, 1952.

Then we have on December 9, 1954, the United States District Court dismissed the Government's suit.

On February 8th, 1955, General Motors advanced a new issue of 4.4 million shares of stock.

On September 23, 1955, there was a three-for-one split of General Motors common stock.

Q. What is the date of the split?

A. September 23, 1955.

Q. Was that the date of the split?

A. No. This, again, is the date that the stockholders approved the split.

[fol. 1106] There was a secondary distribution May 1st, 1956.

Then there was a hearing in the Supreme Court in November, 1956. I wasn't able to obtain the exact date, but it doesn't matter, as this chart is constructed.

And, finally, we have June 3rd, 1957, the United States Supreme Court reversed the District Court.

And those are the nine critical dates.

Q. Now that is supported by Government Exhibit for identification 321. Would you refer yourself to that document, sir?

A. Yes.

Q. Does this give this deflation you have spoken about for General Motors and du Pont?

A. Insofar as 320 is concerned, we have given only the General Motors. The upper half of that tabulation shows the deflation of General Motors, yes.

Mr. Metzger: I offer Government Exhibits 320 and 321.

Mr. Burnham: We have several objections, your Honor. I think they can best be developed by a couple of questions directed to the witness, if we may have your Honor's indulgence.

The Court: You may inquire.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, in this deflation of the General Motors price, do I understand that for each General Motors price that you have selected, you have divided that price by the same number all the way across the board?

A. No.

[fol. 1107] Q. The number you have used has varied with each time you have divided it, is that correct?

A. That is correct.

Q. How did you select the number that you used to divide into the General Motors price in this deflation process?

A. Well, you have got to get the comparable dates.

Q. Comparable dates of what, sir?

A. Well in other words when you divide January, 1946, you take the January, 1946 price of General Motors and divide it by the market price of General Motors in January, 1946, and so on——

Mr. Tierney: Divide the market price by the market price?

The Court: Read the witness' answer, please.

(Record read.)

The Witness: I am sorry. May I correct that, please?

Mr. Burnham: You certainly may.

By the Witness:

A. You divide it by the index value, by the index value of the composite group.

By Mr. Burnham:

Q. Standard & Poor's composite index figure for that date?

A. That is right.

Q. And in February, 1946, say, you pick the General Motors price and divide it by the Standard & Poor index number of that date?

A. That is right.

Q. What you end up with then is a figure which expresses the relationship between the General Motors price and the Standard & Poor index number, is that correct?

[fol. 1108] A. If you want to put it that way. What we are trying to do here——

Q. Well, would you put it that way, Mr. Boni?

A. Would I put it that way?

Q. Yes.

A. No, I wouldn't put it that way.

Q. How would you put it?

A. I would put it that we are deflating this, and being that Standard & Poor index is on a 1941-43 base, that we are then looking at General Motors in terms of the 1941-43 base.

Actually all we are trying to do, we could use any index here——

Q. No, I want to stick to what you have done here.

A: All right.

Q. In January, 1946, then, turning for the moment to Government Exhibit 321 for identification, which is your Schedule 13, you show a figure of 7.387, is that correct?

A. Yes.

Q. And that is the figure that you got by dividing the General Motors price by the Standard & Poor index number of that date and making some adjustment for decimals, is that correct?

A. Yes.

Q. It isn't dollars, though, is it, when you get all through?

A. Yes—1941-43 dollars.

Q. You mean, if you had a pocketful of 1941-43 dollars, you could buy a share of General Motors with 7.38 of those?

A. Well, the answer here is that we are not interested in whether it is $7.00 or seven cows, or anything at all. We are interested in the changes after we have eliminated the effect of the general market.

In other words, if the general market went up 10 per cent and General Motors only went up 10 per cent, we [fol. 1109] would get a straight line across. On this basis, General Motors wouldn't move at all.

On the other hand, if the general market moved up 10 per cent, and General Motors moved up 20 per cent, then we have a movement upward, and a significant movement upward.

That is what we are trying to establish here, how much of the movement in General Motors is reflected by outside conditions and how much isn't. Whether it is $7.00 or $70.00, I have no interest in that here. I am interested in the trend of it. I am interested in seeing whether General Motors was moving upward or downward. Now, whether it was $7.00 or not, there is no point in going into it.

Q. Then the figure is, as I said a little earlier, a figure expressing the relationship of General Motors to the Standard & Poor's index?

A. All right, have it that way.

Q. And it is not dollars, is it?

A. I wouldn't press the point, I don't think.

Q. You said it wouldn't make any difference whether it was $7.00 or seven cows?

A. I wouldn't press the point because it doesn't make any difference.

Q. Now in the selection of the dates which appear—oh, one other question before I get to that.

These General Motors figures which you have selected for your adjusted prices are month-end figures, are they not?

A. Adjusted closing prices, that is correct.

Q. You selected the closing price on the day at the end of the last trading day of the month?

A. Yes.

Q. And that is the figure you selected?

A. Yes.

Q. It is not an average for the month?

A. No.

Q. It doesn't reflect, in other words, whether at any time during the month it had been 10 points higher? It [fol. 1110] wouldn't reflect in these figures at all, would it?

A. That is right.

Q. Not even on an average basis?

A. That is right.

Q. Mr. Boni, I would like you to turn, if you will, to Government Exhibit 320 for identification.

A. Yes.

Q. I call your attention to the date of February 8, 1955, your statement there:

"General Motors announces new issue of 4.4 million shares of common stock."

Do you mean by that that the announcement appeared February 8, 1955?

A. That is what it says here.

Q. Is that what you meant?

A. That is what I meant, yes.

Q. And you are comparing the price movement around that date with——

A. No, not on that date. In the first place, we are using monthly data—

Q. Just a moment. Let me finish my question, please.

A. I am sorry.

Q. You put that on to show what happened to the General Motors price at or about the time of that announcement, is that right?

A. No. No, you are misreading the chart completely. You have got to look at——

Q. Why did you put it there?

A. Why did I put it there? That is where it belongs in the terms of that month, but the purpose of it is to look for

a considerable period before and for a considerable period after to see what really happened here. We are using, as I explained in my testimony here——

Q. Now, just——

A. May I finish? As I explained earlier in my testimony, [fol. 1111] one of the reasons we used monthly data was to get away from the very thing you are talking about. This is not a day to day comparison at all.

Q. You didn't use a day, but you used end of the month data for one day, didn't you?

A. Yes.

Q. And you are comparing, by placing this on here, you are trying to portray what happened to the price of General Motors stock before and after the particular date you selected, weren't you?

A. In terms of months; not in terms of days.

Q. In terms of months?

A. Right.

Q. Why did you pick that particular day, Mr. Boni?

A. Because that was a day—I could have left the particular day of the week out. Instead of saying February 8, 1955, or whenever it is, I could have, being that this is a monthly chart, I could have said February, 1955, and it would serve the purpose just the same.

Q. Did you select that date yourself, Mr. Boni?

A. Did I select it myself?

Q. Yes. Are you the one?

A. I wouldn't remember. There were thousands of calculations here. We had instructions to take these days.

I assume without checking it—in fact one of my assistants happens to be in the room. He checked with me what should we use, and I said take the date——

Q. Now, will you just please answer my question?

Are you the one who determined that February 8, 1955 was the date on which General Motors made this announcement?

A. Did I determine it?

Q. Yes.

Mr. Metzger: Your Honor, may I say—

The Witness: We had some documentary evidence around.

[fol. 1112] Mr. Metzger: Your Honor, may I say that this is not relevant in view of the witness' testimony that this is monthly a.

The Court: Overruled.

Mr. Burnham: May I have the answer read, please?

(Record read.)

By Mr. Burnham:

Q. What documentary evidence?

A. May I consult with my assistant and ask him what he used?

Q. Yes, you may.

A. It is a General Motors report. Here we are. The offer became effective—reading from the General Motors annual report—on February 8 and expired on March 7, 1955.

Subscriptions to it through the exercise of rights, and so forth.

Q. Do you know what date that offer was announced, Mr. Boni?

A. Offhand, no.

Q. Then why did you say on the chart that General Motors announces the issue of 4.4 million shares of stock on that date?

A. Well, here it says additional funds were provided by the offer made in February, 1955, to the holders of the then outstanding $5 par value common stock.

Q. Mr. Boni, don't you know that that offer was announced in January, early January, January 3, 1955?

A. That wouldn't bother me.

Q. Well, I call your attention——

A. (Continuing) In the terms of the analysis I made here because this is not a day-to-day comparison. One of the points that I tried to bring out was that daily movements, [fol. 1113] weekly movements—and as a matter of fact, if I had been permitted to proceed with the analysis, I would have shown that what we were interested in is not only what happened after, but what happened before.

Q. Just a moment. I don't care about what you would have shown if you had proceeded.

You didn't proceed any farther than this?

A. Yes.

Q. I ask you, Mr. Boni, to look at Government Exhibit No. 320 for identification.

A. Yes.

Q. Will you tell me what happened to the price of General Motors stock between the end of January, 1955 and the end of February, 1955?

Did it go up or did it go down?

A. Are you speaking now on a deflated basis or on the straight basis?

Q. I will take it on either basis.

A. On either basis.

On an undeflated basis, it moved up very slightly, and on a deflated basis it moved down very slightly.

Q. I said from the end of January, Mr. Boni, to the end of February.

A. I am sorry. It went down.

Q. In both instances?

A. May I give you the exact figures, instead of reading it off the chart?

Q. I am interested in the chart at this moment.

A. I can read it, rather than guessing.

I want to give you the numbers.

Q. You don't have to guess from your chart, do you, Mr. Boni?

A. Yes. It went down somewhat, yes.

Q. It went down sharply, didn't it?

A. Oh, no, that is not sharply.

Q. It went down more sharply that it did any six-month period before or after, didn't it?

A. Any six-month period before or after?

Yes. It was moving in a straight line upward prior to that.

[fol. 1114] In 1954 there was no decline in the entire year of 1954.

Q. It declined after the announcement?

A. No, no. No, wait a minute.

Talking from January, 1954, through December, 1954, this stock moved practically in a straight line upward.

When you look at the extent of that rise, and you try to point to this decline, I think that you are just exaggerating a movement on the chart out of all proportion to what the chart shows.

Mr. Burnham: Well, I must disagree——

The Court: Counsel, may I suggest that you defer your cross-examination until later? I thought you were just going to ask a few questions, but this is getting into regular cross-examination. You will have all the opportunity you wish to show any errors that may exist.

Mr. Burnham: Thank you, your Honor.

My objection is based upon his selection of dates primarily, and I confess I got carried away on that series of questions.

I would like, if I may have the Court's indulgence, just to ask him about three more dates he selected, without going into such detail.

Mr. Metzger: If it please the Court, any objection going into the selection of the dates goes as to weight not its admissibility, and I think is not appropriate at this time.

The Court: I think you had better just reserve your questions for now.

Mr. Burnham: Government Counsel has offered this. [fol. 1115] I object to its admission, your Honor, on the ground that it is inaccurate in that the dates selected by Mr. Boni, both this date and also the dates of September 27, 1950, September 23, 1955, and May 1, 1956, all are in error.

I also object to the caption "Dollars" that appears on the exhibit.

The Court: Overruled.

(Said documents, so offered and received in evidence, were marked Government Exhibits 320 and 321.)

The Court: Proceed.

Direct Examination:—(Continued)

By Mr. Metzger:

Q. Referring to Exhibit No. 320, what would you say is the significance of this exhibit in relation to your study?

A. By placing these, what I have termed critical dates in regard to litigation, and with regard to changes in capital structure, secondary issues, and so on; it was the purpose of this chart to see how vulnerable General Motors was to these two factors.

Now, let's start with the first one, June 30, 1949. We look at the deflated price, and we find that there was

practically no change from 1947 th ough the beginning of the litigation.

Commencing with the litigation, we find—and let's confine ourselves to the deflated line because it is the only one that has any real significance here—we find that between then and the split, which occurred in September, 1950, that the deflated price rose almost continuously from that period. In other words, from the mid-1949 through September 1950.

[fol. 1116] Incidentally, what happened after the split is somewhat different than most analysts would expect since, despite the split, the stock actually went down on a relative basis through the beginning of 1952. Then it commenced another upward movement, which culminated somewhat after the beginning of the trial. In other words, the trial started in, let's see, November 1952. General Motors moved up in December 1952, and then moved down slightly through 1953.

In the fourth quarter of 1953——

Mr. Bushby: If your Honor please, wouldn't it expedite matters—this exhibit is in evidence, and we can read.

What purpose is served by having this man just read it? It is just wasting everybody's time.

Mr. Metzger: If it please the Court, the witness is testifying as to the meaning of the various movements up and down; not as to the effect of the movements in relation to the specific events.

By Mr. Metzger:

Q. Will you continue, Mr. Boni?

A. Yes. Now, it is interesting that the suit against du Pont was dismissed by the District Court in December, 1954 and——

The Court: I don't think it is necessary to go into these details. I can read the chart. I think that should be sufficient to cover it.

Let's move on.

By Mr. Metzger.

Q. Referring to Government Exhibit for identification No. 322, Mr. Boni, will you describe this document, please?

[fol. 1117] A. Yes. This is a comparison of the yields in General Motors common stock with the yields on Standard & Poor's composite index.

Q. I gather from your previous testimony that yields are inversely stated?

A. Yes, the yields are inversely plotted.

Actually, there are three lines on the chart.

One plots the actual yield as based without any subjective judgment as to General Motors' payments, particularly their extras.

The other one plots these yields after making appropriate adjustments for the extras.

Q. Referring to Government Exhibit 323 for identification, I note that you have columns including extras and excluding extras. What do you mean by extras?

A. Well, if you will turn to Exhibit 323, I thing I can explain this.

If you will look at General Motors payments, which start here for the last three quarters of 1945 and go through to the first quarter of 1958, you will find that commencing in 1948 General Motors in the fourth quarter made some very unusual payments.

You will notice, for example, that in the fourth quarter of 1948, after paying $1.25 in the first quarter and $1.25 in the second quarter, and $1.67 in the third quarter, that it jumped in the fourth quarter to $3.33.

In 1949 we have the same problem, that the fourth quarter dividend jumped from $2.08 in the preceding three quarters to the fourth quarter of $7.08.

Again, in 1950 the third and fourth quarters show unusual dividend payments.

[fol. 1118] Now, the problem is this. We are trying to see to what extent General Motors responds to changes in yield, and what it shows is that if we take—let's go back to Exhibit 322 for the moment.

What it shows is that in this period, 1949 through 1951 General Motors—when we include all these extras—sold to yield anywhere from 9 per cent to 14½ per cent, a point which was reached in mid-1951, and completely awry from the yields shown by the composite.

What I wanted to know was, what was the reason for this? Was it possible for General Motors in any period to

sell for a yield which was so far apart from that of the general market?

I would like to refer to some of my notes.

Mr. Bushby: Here again I do not see why this exhibit isn't offered.

It is perfectly plain what it is all about. We do not need this.

Mr. Metzger: Counsel has indicated—he says that there will be objections and he does not state any reason.

We are now explaining to him the basis of the selection of what constituted an extra.

By the Witness:

A. (Continuing) I would like to backtrack here a little bit and point out that yields are conventionally computed by accumulating the dividends paid during a given quarter on the preceding quarter.

Doing it in this fashion, when we are dealing with a group, the effect of these extras is lost for the simple rea- [fol. 1119] son that when you are dealing with a group you have, where, in one case you have a company paying an extra, you have another company cutting its dividend, and you have a certain amount of counter-balancing factors, and when you measure an overall yield like that, I suppose it is proper and not too important.

But, when we come to measure the yield on an individual stock we have an entirely different situation. There there are no counterbalancing and countervailing factors.

There we must again subjectively see what transpired in terms of the investor and what this analysis shows is that—and I think I talked about this before—is that when there are extra dividends the average investor, certainly the sophisticated investor, recognizes it as an extra, and for that reason is not rushing into the market to buy General Motors even though it shows that at that particular point it is to yield 14 per cent because all that would happen would be that he would buy the stock and then merely get his money back and, therefore, to really see how yields of General Motors behave here, we have made this analysis on Government Exhibit 322 which shows when you take those into account, that instead of having erratic move-

ments of General Motors yield, the yields then conform pretty closely to the yields of the composite.

Q. How do you determine what is an extra?

A. Well, very subjectively, as I mentioned before. Now, let us see what we did here. If you will look at Column 3 and compare it with Column 1, you will see what we did.

For example, in the fourth quarter of 1948, we treated the difference between the $1.67 and the $3.33 as an extra. [fol. 1120]. In other words, we took in as the fourth quarter of 1948 the dividend for the third quarter.

Then when the dividend was stepped up to $2.08 in the first quarter of 1949, we assumed then that this had begun to look like a regular stepped-up dividend for General Motors.

Again, when the fourth quarter came along and they paid $7.08 instead of $2.08, we still treated it as $2.08.

In the first quarter of 1950, again General Motors stepped up its dividend to $2.50, and we decided that this looked like what General Motors was going to do. This obviously had the benefit of hindsight.

Nevertheless, when we smoothed that dividend pattern to express what was going on without these abnormal payments, we find that General Motors, as may have been anticipated, would keep in line through this process of the denominator being dividends keeping these yields in line with the general market.

Q. Was this an attempt to determine what you yourself would consider an extra or what an investor would consider an extra?

A. Well, what the investor would consider to be the extra.

Q. In order to determine what yield he would seek on General Motors?

A. That is right.

Mr. Metzger: I offer Government's Exhibits 322 and 323 for identification.

Mr. Burnham: I have only one question I would like answered yes or no, your Honor, and that is this——

[fol. 1121] Cross Examination.

By Mr. Burnham:

Q. Mr. Boni, did you make any attempt to exclude extras from the yield on the composite 500 stocks?

A. No. As I explained a moment before——

Mr. Burnham: Thank you.

Your Honor, I object to——

Mr. Metzger: The witness has a right to explain a simple yes or no answer in this context.

The Court: You may explain it.

By the Witness:

A. I think I tried to explain before that when we are dealing with a large group of stocks where you are dealing with an average and there is an opportunity for offsets, that it isn't at all important.

I would also say that if I were really trying to refine that series and again get into minutia, which are not relevant here in my opinion, I might even consider going through these securities stock by stock.

Direct Examination:—(Continued)

By Mr. Metzger:

Q. What do you mean, Mr. Boni, by an offset?

A. Well, as I pointed out before, you have one company paying an extra, and you have another company cutting its dividend in one quarter, and as a consequence you get a smooth curve.

If you would look at the exhibit here and look at the pattern of the composite, you will find that it is relatively smooth.

On the other hand, when you look at the General Motors' [fol. 1122] pattern, instead of it being smooth in that period, it is erratic, indicating that the investor was not giving effect to those extras, because if General Motors could be selling with a 14 percent yield at that time, if that yield had any scintilla of permanence, as I know the market, there would be enough investors, enough buyers around overnight to bring that stock into line.

But, what this obviously said was that the investors were not impressed by the fact that General Motors was yielding 14 per cent.

Mr. Metzger: I offer 322 and 323.

Mr. Burnham: We object, your Honor, on the ground that the adjustment for yields or adjustment for so-called extras was improper.

The Court: Overruled.

(Said documents, so offered and received in evidence, were marked Government Exhibits 322 and 323.)

The Witness: I wonder if I may have a few minutes' recess, please?

The Court: The Court stands recessed for ten minutes.

(A short recess was thereupon taken.)

The Court: I was going to suggest, Mr. Metzger, that you can shorten this up by having the witness describe these exhibits more generally and not going into so many details.

Mr. Metzger: We won't have that difficulty from now on, your Honor.

I offer Exhibits 323 and 324, as I am not sure whether you ruled on them or not.

[fol. 1123] The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 323 and 324.)

By Mr. Metzger:

Q. Mr. Boni, referring to Exhibit 325, for identification, what does this document show?

A. It is a comparison of General Motors price earnings with the composite index.

I would like to remind you here that there will be some changes in it——

Mr. Tierney: I can't hear the witness.

The Court: Will you speak louder, please?

By the Witness:

A. (Continuing) There will be some changes when we take into account the 1946 through 1951 changes in the composite price earnings ratio.

By Mr. Metzger:

Q. Are they significant?
A. No.

Mr. Metzger: I offer Government Exhibits 325 and 326.

Mr. Burnham: Your Honor, with respect to 325 and also, I believe—

I am sorry—I have no objection to Exhibits 325 and 326. It was Exhibit 324 that was offered at the very outset, after the recess. We do object to that, and I didn't realize that that was the one he was offering. We object, because of what is done with respect to extras on the yields of General Motors stock, in Exhibit 324.

[fol. 1124] The Court: The objection is overruled.

(Said documents, so offered and received in evidence, were marked Government Exhibits 325 and 326.)

By Mr. Metzger:

Q. What does Exhibit 325 show, Mr. Boni?
A. It shows the relationship of the General Motors price earnings ratio with that of the composite index.

The one most interesting thing to note in this particular exhibit is that in 1956 and 1957 you will notice that General Motors crosses over the composite—this is significant for the reason that that was the period when the automobile market was softening and General Motors' earnings were softening, and it shows the high regard of the market, that it did not fully reflect the decline in General Motors' earnings in that period, the relative decline; and for the first time—in fact, for the first time since 1947, we have the phenomenon of General Motors selling at a higher price earnings ratio than the composite.

It is very significant.

Q. What is the significance, sir?
A. It shows the strength of General Motors.

It shows that here—the investor's confidence in General Motors—that even when earnings started to decline, when the press was full of all sorts of dire predictions about where the automobile industry was going to go, that General Motors did not—the price earnings ratio did not decline; it held up better than the entire industrial group,

[fol. 1125] indicating the underlying strength and confidence of investors in General Motors.

Q. Turning to Exhibit 327 for identification and Exhibit 328 in support thereof, what does this document show?

A. This is a comparison of General Motors prices, first adjusted for the stock splits, and adjusted and deflated, and comparing it with the price of the automobile group.

Q. Adjusted and deflated?

A. Yes, adjusted for stock splits and deflated for the general movements in the stock market.

Q. In the stock market, or in automobiles?

A. This is deflated by the automobile index.

Q. How do you do that, sir?

A. Instead of deflating it by general market, as we did the first time, by taking the automobile index and deflating it.

In other words, this now gives us the true picture of General Motors, taking out--

Q. But this is a trend, and not really a dollar trend; or, if it is a dollar trend, it is dollars in terms of 41-43?

A. I didn't want to come back to this; but as I thought about it during recess, they are dollars, they are 41 to 43 dollars, and the seven dollars that Mr. Burnham asked me about—the 41 dollars would have bought a share of General Motors in 1946, because you had the rise of the $7 between 41-43 into '46.

Mr. Metzger: I offer Government's Exhibits for identification 327 and 328.

Mr. Burnham: Just so the record will be clear, the deflation was by the automobile index, exclusive of General Motors, was it not, Mr. Boni?

The Witness: That is correct.

[fol. 1126] By Mr. Metzger:

Q. What is the significance of this exhibit, Mr. Boni?

A. Well, it once more shows that stocks do not fluctuate in vacuum, that dividends and earnings are an important factor; and it also shows the unusual strength of General Motors, where it was able to go contrary to the trend--because, so frequently in industrial groups, there is a tendency for the stocks within industrial groups to move together, and the weakness of some will generally pull the

others down; and this is just another manifestation of that——

Q. Turning, Mr. Boni, to Government's Exhibit for identification 329, Schedule 14, and to Government's Exhibit 328, Schedule 17, in support thereof—I am sorry—Government's Exhibit 330, for identification, Schedule 12, what does this chart show, Mr. Boni?

A. This is the identification technique that was employed with respect to General Motors, this time applied to du Pont. We took the adjusted price, adjusted for stock splits, deflated it by the overall industrial index to get a better picture of du Pont's prices; and we also looked at du Pont's prices in relation to the litigation, as it was affected by the litigation.

Mr. Metzger: I offer Government's Exhibits for identification 329 and 330.

(Said exhibits, so offered and received in evidence, were marked Government's Exhibits 327 to 330.)

By Mr. Metzger:

Q. To abbreviate the discussion of this exhibit, Mr. Boni, as a whole, what do these dates show with relation to du Pont's prices?

[fol. 1127] A. As in the case of General Motors, it shows that du Pont was pretty much impervious to the litigation; when the litigation was favorable and unfavorable, there was no relationship between the movements of du Pont and the litigation.

Q. Turning to Government's Exhibit for identification 331, will you describe the document, Mr. Boni?

A. This is a comparison of General Motors and du Pont prices for the period 1946 through 1958, with both stocks being adjusted for stock splits.

Mr. Metzger: I offer Government's Exhibit for identification 331.

(Said document, so offered and received in evidence, was marked Government Exhibit 331.)

By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. It shows over the years and over the period involved here very little difference between the movements of du Pont and General Motors.

I would also like to point out that my attention was called to the fact that, I think, starting in the last three months the plottings were reversed, namely, that the dotted line should be at the bottom and the solid line at the top, with General Motors being on top instead of du Pont.

Mr. Metzger: We will correct the official copy of that.

By Mr. Metzger:

Q. What inference do you draw from the general correlation between the prices of General Motors and du Pont? [fol. 1128] A. Well, essentially, this was a background chart, where I was trying to see whether there were any different characteristics with respect to the price movements of these two securities.

Q. Turning now to Government's Exhibits for identification 332 and 333, will you describe these documents, Mr. Boni?

A. This is a comparison on a quarterly basis of du Pont yields with the yields of the composite group. Again, there would be corrections to the composite for the period 1946 and 1952; but, as I explained before, they are rather insignificant.

Now what the chart shows——

Q. Before we get into that, Mr. Boni——

Mr. Metzger: I offer Government's Exhibits 332 and 333.

Mr. Burnham: Your Honor, with the Court's indulgence, I have about two questions on those.

Cross examination:—(Continued)

By Mr. Burnham:

Q. Mr. Boni, what proportion of du Pont's dividend was from General Motors sources in the years 1951 and 1952, approximately? I don't expect an accurate figure.

A. I have a complete tabulation of that here.

Mr. Metzger: We will refer out of turn to Government's Exhibit 338 for identification.

By Mr. Burnham:

Q. It is roughly one-third, is it not, Mr. Boni?

A. Yes, 37.94 in 1950, and 35.13 in 1951, that is correct.

Q. Now the GM dividend in those years, you said constituted, in large part, an extra dividend, or in some part an extra dividend, did you not?

A. Yes.

[fol. 1129] Q. You make no adjustment on this chart, however, for that extra as an extra in du Pont, do you?

A. You mean to take it out of du Pont?

Q. That is correct. You have made no such adjustment, have you?

A. There is a very simple reason for it.

Q. Kindly just answer my question.

A. Didn't I give you the reason?

Q. You may give the reason, if you wish. I assumed that Government counsel would bring it out.

Mr. Burnham: I object, your Honor, to the charts on the ground that they are not consistent with the other things that he has done—the same dollars.

Direct Examination:—(Continued)

By Mr. Metzger:

Q. Would you explain your answer to that last question, Mr. Boni?

A. Yes. What we were trying to do in the General Motors stock was to explain what looked like a very unusual movement in the pattern of General Motors yields.

In the case of du Pont, the correlation here was so close it would serve no purpose to make these refinements, because this shows very definitely how du Pont is tied in on a yield basis to the composite.

Q. If you did make such adjustments, Mr. Boni, for the years 1948 to 1950, which, I believe, are the most significant, what would that do with your correlation between the composite and the du Pont index? Would it move the du Pont line closer to that of the composite or farther away?

[fol. 1130] Mr. Bushby: I object to leading the witness.

By the Witness:

A. In the first place, this is the yields on du Pont's stock, which has to do with du Pont's earnings, which includes General Motors, of course; and I don't quite understand what would be accomplished by eliminating the—we are trying to see what the investor is paying for du Pont here on the basis of du Pont's earnings.

By Mr. Metzger:

Q. Do you have an exhibit showing the dividend of du Pont over the period?

A. I think that it is here, yes.

Yes, Exhibit 333.

Q. In 1948 the dividend was following the 1947 pattern of $2, to the fourth quarter, when it was raised 40 cents.

Mr. Bushby: I object to leading the witness.

He is your own witness.

The Court: Sustained.

By Mr. Metzger:

Q. Mr. Boni, would you say that the yields for du Pont would change significantly over the period 1946 to 1958, if an adjustment were made for the extras in General Motors' dividend?

A. Well, obviously, it would change.

Q. Significantly?

Mr. Bushby: I object to that.

The Court: Sustained.

By Mr. Metzger:

Q. What would such change be, Mr. Boni?

A. Well, that is why I am answering it reluctantly, Mr. Metzger—because we are dealing here with the dividend [fol. 1131] paid by du Pont; and you are asking me, in effect, as to what du Pont would have done under different dividend conditions than General Motors.

I don't know. I would want to think about it a great deal before answering.

Q. What was the period in which you reflected General Motors as having extra dividends?

A. Mainly the period 1948 through 1950.

Mr. Metzger: If the Court please, Mr. Burnham has made an objection to the appropriateness of the selection of du Pont dividends between 1948 and 1950. I suggest the objection goes to the weight of the exhibit.

Mr. Burnham: I would like to expand that just one step further. I notice that Exhibit 333 also says, "including extras," which means it includes du Pont extras as well as General Motors' extras.

Mr. Metzger: That is correct.

The Court: Overruled.

(Said documents, so offered and received in evidence, were marked Government's Exhibit 332 and 333.)

By Mr. Metzger:

Q. Turning now to Exhibit 334, what does this document show, Mr. Boni?

A. This is a spread between yields for du Pont common stock and the composite stock index on a quarterly basis, '46 through the first quarter of 1958.

Q. You indicated there, will have to be some changes the composite yields for the first four years?

A. Yes. They will be very inconsequential.

Mr. Metzger: I offer Government's Exhibit for identification 334.

[fol. 1132] Mr. Cox: I have no objection, Mr. Metzger. I wonder if before you read it, you would ask the witness to explain how the average is computed.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 334.)

By Mr. Metzger:

Q. Mr. Boni, referring to the bottom of Exhibit 334, on the right-hand side where you have the word "Average—Average: 4.10, 5.29, one minus 1.19."

Is it an arithmetical average or a mean, or what?

A. I would like to check it. I am pretty sure it an arithmetic average, but I would not be sure without referring back to work papers.

Q. It is not weighted in any sense, is it?

A. I do not see why it would be, no.

Q. Now, turning to Government Exhibit for identification 335, what does this document state?

A. This is a comparison of du Pont's price earnings ratio with the composite, which again will require minor change for the period '46 through '51.

Q. And that is supported by Schedule 19, which is Government Exhibit for identification 336?

A. That is right.

Mr. Metzger: I offer Government's Exhibits 335 and 336.

(Said documents, so offered and received in evidence were marked Government Exhibits 335 and 336.)

By Mr. Metzger:

Q. Mr. Boni, what is the significance of this exhibit [fol. 1133] 335?

A. Well, again it shows the general conformity between the pattern of du Pont's price earnings ratio and the composite.

Q. Does this dotted line indicating du Pont's price earnings ratio have any significance?

Before I believe you indicated that the line was just a mean in another exhibit.

Is this actually du Pont's price earnings ratio during these periods?

A. This is du Pont's actual price earnings ratio.

Q. Is this the actual price earnings ratio of the composite?

A. This is the actual price earnings ratio of the composite.

Q. What does this difference mean to you between the composite and the du Pont figure?

A. Well, the fact that what we were trying to see here—whether it proved out the basic thesis of the earnings being determinative of price, and also whether the spread between the price earnings ratio of du Pont and the composite showed any erratic situation.

Actually, other than for 1946, which was a post-war year, and subjecting the different companies to different types of abnormalities, the spread between the two lines is reasonably constant.

In the earlier one it shows that the spread on an average is rather a small one. It is 1.19 per cent.

Q. What does the spread itself indicate?

A. Excuse me. I am sorry. That is incorrect because I was reading from the yields rather than—oh, no, I guess there was no spread computed here.

[fol. 1134] Q. Government Exhibit 335?

A. That's right.

Q. Do you draw any conclusion, Mr. Boni, from the fact that du Pont sells for a price earnings ratio higher than that of the composite?

A. Yes.

It is an indication of its unusual high qualities in the eyes of the investor.

Q. Turning to Government Exhibit for identification 337, would you explain this document, Mr. Boni?

A. This is the same technique we used before with General Motors.

We deflated du Pont. We first adjusted du Pont for the stock split and then deflated it for the chemical group to see how it compared with the movements of the chemical group.

Q. And this is supported by three schedules already in evidence, is that correct?

A. That is correct.

Mr. Metzger: I offer Government's Exhibit for identification 337.

(Said document, so offered and received in evidence was marked Government Exhibit 337.)

By Mr. Metzger:

Q. Mr. Boni, what is the significance of this exhibit?

A. It shows that commencing in 1955 du Pont's deflated price moved downward somewhat.

The inference that I draw from the study here is that it did worse than the chemical group through this period probably because of the influence of its ownership in General Motors.

Q. What do you mean by that, sir?

A. Well, I mean as to the outlook of the automobile [fol. 1135] industry, which deteriorated commencing in 1955, and so on, and in view of the fact that a proportion

of General Motors earnings are attributable—rather, du Pont's earnings are attributable to the General Motors dividends. It just was a negative factor for that period of time.

Q. To what do you attribute the rise beginning in mid-1956 and still continuing relatively in 1958?

A. Oh, the general healthy condition of du Pont, expanding, good products, good earnings, good dividends.

Q. In relationship there with its ownership in General Motors stock?

A. Yes. This was a period of good earnings for General Motors.

Q. I didn't hear your answer.

A. The answer was yes, this was a period of good earnings for General Motors.

Q. Good earnings overall or good earnings with relation to the rest of the industry?

A. No, this would depend on General Motors' own earnings. Frankly, I wouldn't want to assign a real cause and effect of relationship there. I could only hypothesize, without further study and investigation. I wouldn't want to make too strong a statement on that subject.

Q. Referring to Government Exhibit for identification No. 338, Mr. Boni, will you describe this document, sir?

A. Yes. This shows the proportion of du Pont earnings, comprised of General Motors dividends annually 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification No. 338.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 338.)

[fol. 1136] By Mr. Metzger:

Q. Mr. Boni, what does this Exhibit 338 show? What is the significance of the exhibit?

Mr. Bushby: It is right on its face, your Honor.

The Court: I think it is self-explanatory, counsel.

Mr. Metzger: Your Honor, what we are referring to is the percentage of General Motors——

The Court: Can we see it from the exhibit?

Mr. Metzger: All right, your Honor.

By Mr. Metzger:

Q. Turning now to Government Exhibit 339, for identification, will you explain this document, Mr. Boni?

A. Yes. This is a tabulation of all the purchases and sales and member trading, per cent of number of shares traded on the New York Stock Exchange for the years 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification No. 339.

Mr. Burnham: Your Honor, I have several questions about this, but I think that they would make more sense if we had some statement as to the relevancy of this particular exhibit.

My interest is primarily in the odd lot figures on the exhibit. I want to get into the basic data that Mr. Boni cites, unpublished data, and I believe he has some material with him on it.

By Mr. Metzger:

Q. Mr. Boni, what is the relationship of odd lot pur-
[fol. 1137] chases in this exhibit?

A. Let me preface that by a few remarks here.

These exhibits mark the beginning of the volume analysis which we made in connection with this study, and among the first things we wanted to get was some impression of how the shares traded broke themselves up between the odd lot purchases. In other words, what proportion of total shares are accounted for by the little fellow; what proportion of total shares are accounted for by the members.

Q. Are you going to later relate odd lot purchases of either General Motors or du Pont?

A. Yes, I am. Later on, we then wanted to see, using this as a frame of reference, how General Motors buyers and sellers were distributed among odd lot purchases and round lot purchases.

Mr. Burnham: Mr. Boni, in Volume I, which was submitted to us, is the statement, for which I take it you vouch:

> "Persuasive statistical evidence supports the conclusion that the supply of stocks in the market is being immobilized by ——"

Mr. Metzger: If you will pardon me, your Honor. Counsel is cross-examining the witness.

Mr. Burnham: No. Your Honor, it is simply this: Mr. Boni has stated, and I assume he will ultimately state in his oral examination that this tends to prove immobilization of stock because of the high volume of odd lot purchases and sales.

Now, if that is what this is offered for, then I am [fol. 1138] prepared by a few very brief questions to bring out the fact that it is not, and that is the basis for my objection to this particular exhibit.

The Court: I suggest you defer your questions until cross examination.

Proceed.

Mr. Metzger: I presume Exhibit 339 is admitted?

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 339.)

By Mr. Metzger:

Q. I turn now to Government Exhibit 340 for identification. What is that document, Mr. Boni?

A. This shows the turnover on the New York Stock Exchange on the basis of shares traded in relation to shares listed.

These are the annual data for the years 1946 through 1957.

Q. Is this to be supplemented by specific reference to the companies in question?

A. Yes.

Mr. Metzger: I offer Government Exhibit 340 for identification.

Mr. Cox: I didn't understand what you said about the companies.

Mr. Metzger: I said the percentage would be related specifically to the companies.

Mr. Cox: I see.

(Said document, so offered and received in evidence was marked Government Exhibit 340.)

[fol. 1139] By Mr. Metzger:

Q. Turning to Government Exhibit for identification 341, will you describe that document, Mr. Boni?

A. Exhibit 341 does deal with the problem of demonstrating that stocks were being immobilized through institutional purchases and sales, and provides some of the basic data to demonstrate it.

Q. Before going into that, will you describe what the exhibit is?

A. The exhibit tabulates institutional purchases and sales of common stocks, January, 1953 through October, 1955.

Mr. Metzger: I offer Government Exhibit for identification Number 341.

(Said document so offered and received in evidence was marked Government Exhibit 341.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

Mr. Tierney.: What are you talking about now?

Mr. Metzger: Exhibit 341, also Exhibit IV.

Mr. Tierney: He just explained it, didn't he?

The Court: I thought we just completed Exhibit 341.

Mr. Metzger: We just admitted it, sir. I asked him to explain the significance of this exhibit to this case.

Mr. Cox: Wouldn't it be well, if it please the Court, to have Exhibit 341 identified a little bit more?

I think it came from the Fulbright investigation.

By Mr. Metzger:

Q. What is the ultimate source of this exhibit, Mr. Boni?

[fol. 1140] A. Institutional investors on the stock market, dated December 28, 1958.

Q. What was that document?

A. That was the Senate Banking and Currency study, the Fulbright study. I believe.

I am not sure whether this came from the staff report or was the report itself.

We do have it available here.

By Mr. Metzger:

Q. Mr. Boni, was this study meant to be of all the holdings of all the companies referred to in the left-hand column?

Mr. Bushby: It is not holdings at all.

By the Witness:

A. These are purchases and sales. Well, as I recall it, this was based upon a sample of 210 companies, and we were also able to establish by comparison with some facts obtained by the New York Stock Exchange and contained in the fact book, not that these purchases and sales, but at least that these institutions accounted for, I think, 20 per cent—no—yes, that is right, 20 per cent of the total.

By Mr. Metzger:

Q. And these companies represent 20 per cent of the total of net purchases of about 34 million shares?

A. That is correct.

Q. Of stock in this period of time?

A. That is correct.

Q. About a year and a half?

[fol. 1141] A. Now, I also would have to refresh my memory here, because I think that 20 per cent figure that I gave you is in relation to value rather than the number of shares. I would like to do some homework on that tonight. I am pretty rusty on it.

Q. Would you turn now to Government Exhibit 342 for identification, and tell us what this document is?

A. This is shares traded, market value of all transactions on the New York Stock Exchange Monthly, January, 1946 through May, 1958.

Mr. Metzger: I offer Government's Exhibit for identification No. 342.

Mr. Burnham: I have just one question on that, your Honor.

Mr. Boni, does that include preferred stocks as well as common in those figures?

The Witness: Yes, it does.

Mr. Burnham: I object to the use of an exhibit which includes preferred stocks which are not involved in this case, your Honor.

The Court: Do you know what percentage?

The Witness: No, I would have to check that, your Honor. It is a relatively minor percentage.

The Court: It is what?

The Witness: It is a minor percentage; a small percentage. I could have the exact figures available in the morning.

Mr. Tierney: If the Court please, it is apparently not accurate.

Mr. Metzger: The document is completely accurate, Mr. Tierney. The objection goes to the fact that this document has other information in it besides that pertaining to common stocks.

[fol. 1142] Mr. Burnham: The difficulty, your Honor, is that this document then is used over and over again in connection with other exhibits as if it related only to common stocks, and that is why I raise this objection now to this particular exhibit.

Mr. Metzger: What exhibits does it refer to?

Mr. Burnham: I don't have them in mind offhand.

The Court: Well, you will have an opportunity to cross-examine the witness.

(Said document, so offered and received in evidence was marked Government Exhibit 342).

By Mr. Metzger:

Q. Referring to Government Exhibit 343 for identification, will you describe this document, Mr. Boni?

A. This is the number of shares listed and market value of such shares listed on the monthly basis.

This is on the New York Stock Exchange, on the monthly basis January, 1946 through May, 1958.

Q. Does this include preferred stocks, sir?

A. I would have to check this, Mr. Metzger. I don't have any ready recollection.

Mr. Burnham: If he finds it includes preferred stocks, I have the same objection for the same reason.

The Court: All right. Will you give us a report on that tomorrow?

The Witness: I certainly will.

Mr. Cox: May it please the Court, there is one question for clarity that I would like to ask about Exhibit 343.

[fol. 1143] I note Exhibit 342 says total shares traded and market value of all transactions on the New York Stock Exchange and the note says, "Data comprised reported and non-reported, round lot sales and odd lot purchases and sales."

There is no such statement on Exhibit 343.

Will you find out if there is any difference?

Mr. Metzger: Exhibit 343 is just listings.

Mr. Cox: I see.

(Said document, so offered and received in evidence was marked Government Exhibit 343.)

By Mr. Metzger:

Q. Turning now to Government's Exhibit for identification No. 344, would you describe this document, please?

That is Exhibit V.

Will you describe this document, Mr. Boni?

A. Yes. This shows the short interest, total shares traded, short interest as per cent of total traded, the month of the yearly high and the month of the yearly low; in other words, it provides a measure of the high and low of short transactions.

Mr. Metzger: I offer Government Exhibit for identification No. 344.

Mr. Burnham: Your Honor, this is one which does refer to Schedule 20, which is the one on which I raised the preferred stock item.

I don't think it is very important on this exhibit, and I don't wish to object and will not object, but I did want to call it to Mr. Metzger's attention.

[fols. 1144-1145] It is the first of a number that it refers to.

The Court: All right.

(Said document, so offered and received in evidence was marked Government Exhibit 344.)

The Court: It is time for adjournment.

(Whereupon an adjournment was taken in the above-entitled cause until Wednesday, March 4, 1959, at 10:15 a.m.)

[fol. 1146]

Transcript of Proceedings of March 4, 1959

The Clerk: Case on trial.

The Court: Counsel may proceed.

ALFRED BONI, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination:—(Continued)

By Mr. Metzger:

Q. Mr. Boni, late in yesterday's session you were asked a question regarding Schedule 20, Government Exhibit No. 342.

You were asked whether this table included preferred stocks, and with an affirmative response, the question was raised as to the amount of preferred contained in this table.

Have you since ascertained that figure?

A. Yes, to this extent, that no data are separately available on numbers of preferred shares traded.

However, we have a good indication from data available showing the relative importance of the shares listed.

Now, in 1957—I am reading here from the New York Stock Exchange Fact Book—the number of shares listed on the New York Stock Exchange was 4,678,000,000. Of this amount, 125,000,000 were preferred stock shares.

Q. About what percentage is that?

A. That is something in the neighborhood of three per cent and that——

Q. What about trading in that stock?

A. I spent probably a period of eighteen years, spending part of the day watching a ticker tape, and I would say that the activity in preferred shares is very small relative to common shares.

Q. Substantially below the three per cent estimate?

[fol. 1147] A. Very substantially. For example, it is common among the preferred shares to have what they call ten-share lots. In other words, the round lot being ten shares rather than a hundred shares, and there is very little activity in preferred shares. Preferred shares are not bought for trading purposes as a general rule, and just by observation——

Mr. Bushby: I don't think the witness can testify to any of these things from watching the ticker one day some twenty years ago.

Mr. Metzger: That wasn't the response of the witness.

The Court: Overruled.

By Mr. Metzger:

Q. Mr. Boni, with relation to the trading in the General Motors stocks and the dates of selection in Exhibit 320, Mr. Burnham questioned you yesterday regarding the date of the 1955 new issue of 4.4 million $5 par shares, and questioned your selection of the date of February 8, 1955. Will you tell me, sir, why you selected that date?

Mr. Burnham: I questioned it in connection with the announcement, which is the way he lists it on there.

By the Witness:

A. Yes. We read the General Motors report, which I re-read yesterday, and when I re-read it again last night, I realized that the language wasn't too clear.

They speak there, as I recall, of announcing it in February and in a later paragraph announcing it as of February 7, 1955.

That date should have been January, the date of the announcement.

[fol. 1148] Q. Assuming that the date of the announcement were January, what effect would that have upon the conclusions you drew from this chart?

A. The conclusions would be the same.

Q. What of the dip between the last day of January trading and the last day of February trading, shown on Exhibit 320?

A. Well, I don't associate the two particularly.

As I pointed out yesterday, there was an almost uninterrupted rise for an entire year; that could have been nothing more than the result of the technical position of the market.

In addition to that, you would have to take into account the value of the rights that were issued there. That would account for some of the dip.

But in any event, the dip was minor relative to what preceded it in terms of price movement.

Q. Then what is this February date, sir? Is that the date of ex rights?

Mr. Bushby: He testified yesterday to it.

Are you trying to impeach him? It is purely repetitious.

The Court: Yes, I believe he did testify as to that.

Mr. Metzger: I believe he testified yesterday that that was the date of the announcement, if it please the Court.

Mr. Bushby: He read from the General Motors report what the date was.

By Mr. Metzger:

Q. Mr. Boni, is a drop following a rights offering customary in the stock market?

[fol. 1149] A. Well, I think you would have to be more specific in terms of what periods and so forth.

Q. As of the date the stocks go ex rights, is it customary for that to bring about a drop?

A. I see what you mean now. Yes, indeed, the price declines to reflect the value of the right, sure.

I didn't understand what you were driving at, quite.

Q. Turning to the same exhibit, Mr. Boni, the Sloan secondary distribution of 1.3 million shares of General Motors common stock, the date of this is May 1, 1956.

What led you to choose that date?

A. I have before me the Statistical Bulletin put out by the Securities and Exchange Commission, and on Page 16 of that issue, it shows the beginning of that rights issue as having been on April 30 and ending on May 1.

Now the fact that it began on April 30, that probably would mean that it started after trading hours, so that May 1st would be the more appropriate date.

But it would make no difference whether we used April 30 or May 1.

Mr. Tierney: I can't hear you.

The Court: Will you keep your voice up, please? Speak a little slower and more distinctly.

The Witness: Surely.

By Mr. Metzger:

Q. Mr. Boni, yesterday in testifying regarding the institutional holdings as reported by the Fulbright Committee, you testified regarding the number of shares. Do you have any dollar figures for that study?

A. Yes, I do.

[fol. 1150] Q. What are they?

A. That same Committee report, on Tables 6 and 7, and pages 10 and 11, shows the following figures:

Open end investment companies—and this is in millions of dollars—$1752 purchases; $1121 of sales.

Closed end investment companies, $117 sales; $184.

Corporate Pension Funds, 842——

Q. I don't think you will have to read the whole thing. Would you give us the totals, please?

A. Yes. Total $3468 of purchases, and $1954 of sales.

Q. That is in millions?

A. In millions.

I would also like to point out here that this includes data for life insurance companies, and there is a footnote in the compilation which says data for life insurance companies reported for the thirty-three month period January 1953—September 1955.

Q. What does it show for net purchases for this group for the period studied?

A. That would be, roughly, $1500 million.

Q. I believe you testified yesterday that this was a sample.

A. This is a sample of 210, yes.

Q. And what are the assets of this 210 opposed to t. assets of the total, if that figure is available?

A. Yes. The same source estimates the institutional holdings for this sample as $6,241 million on January 1, 1953, and $11,534 million as of October 31, 1955.

Q. What would that be in terms of net purchases?

Mr. Burnham: Your Honor, I don't think that shows anything about net purchases. It merely shows asset value, which could have to do with appreciation, and

[fol. 1151] I object to the question unless there is a foundation laid for it.

By Mr. Metzger:

Q. Do you have any indication of whether this is an asset figure on the market or a cost base?

A. This is a market value.

Q. And you have no way of determining the difference between market and cost?

A. Yes, we have, and I have done so.

By using Standard & Poor's composite index for the same period, we find that during that period that index moved from 261.8 to 421.1, an increase of 60.8 per cent.

Mr. Burnham: May I interrupt, your Honor? I take it that he is going to apply the Standard & Poor's index to those market figures with no possible way of stating whether the market holdings of those companies were the same as the figures that are involved in Standard & Poor's.

I object to any such statistical device as that to arrive at a guess by this witness.

Mr. Metzger: I believe, Mr. Burnham,——

The Court: Well, you will have an opportunity to cross examine. Overruled.

By Mr. Metzger:

Q. Mr. Boni, do you have any figures as to the trading on the various Exchanges in General Motors stock?

A. Yes, I do.

Q. Would you tell us what they show, please?

A. We take all of the Exchanges, that is, the registered Exchanges. In 1946 there were 4,622,836 shares traded, and in 1957, 11,799,805 shares traded.

[fol. 1152] Mr. Burnham: May we ask the source of that, just so we will know?

Mr. Metzger: You have that source, Mr. Burnham, in the figures we have given you on trading on the various Exchanges over the years, in the Volume I tables.

Mr. Cox: Is that in an exhibit?

Mr. Metzger: No, it is not.

Mr. Burnham: Well, couldn't he just state the source for the record, so we will know?

The Court: What is the source of that?

The Witness: With respect to the New York Stock Exchange, Government Exhibit 359 and——

Mr. Burnham: I object to that, your Honor.

It has not been offered or admitted or anything else.

Mr. Metzger: Subject to the offering and admission of that table.

The Court: Overruled.

By the Witness:

A. (Continuing) And as well as Exhibit 360.

Mr. Burnham: Same objection.

Mr. Metzger: The same condition.

The Court: It is received conditionally.

By the Witness:

A. (Continuing) And with respect to the other ex- [fol. 1153] changes, we have correspondence which I submitted to counsel showing how the material was compiled.

By Mr. Metzger:

Q. Have these figures you have just given us been supplied to the defendants before?

A: Yes, they have.

Mr. Burnham: Your Honor, I do not like to prolong the record here.

I would be perfectly willing even to discuss it off the record to avoid adding to what is being typed.

I merely do not recall receiving this. Was this material that we got on that Saturday morning?

The Witness: No, this is material we sent you copies of some time ago, photostats of letters. I think Mr. Gribbon would know that——

Mr. Burnham: I am sorry, Mr. Gribbon is not with me.

The Witness: Well, no, these were furnished—I do not know whether they were furnished you or not, but I furnished the photostats of letters of our exchange of correspondence with the various exchanges, and I believe we have them right in the room here and would be perfectly happy to have you look at them.

Mr. Burnham: Well, I would like an opportunity, your Honor, to examine them.

Mr. Metzger: All the letters show, your Honor, is the various Exchanges submitted these figures. The defendants have had this exhibit for six months, and have had an opportunity to examine it and object.

The defendant du Pont did object and was supplied with copies of the letters. Mr. Burnham is fully free to examine them at his convenience.

[fol. 1154] By Mr. Metzger:

Q. You started to say the total figure for General Motors trading on all exchanges in 1946?

A. Yes. I gave those figures before. Do you want them again?

Q. No. Would you continue?

A. '46 and 1957.

Q. You gave the figure for 1957?

A. Yes, I believe I did.

Q. What percentage of these figures belong to the New York Stock Exchange?

A. In 1946, 86.1 per cent, and in 1957, 80.2 per cent.

Q. Mr. Boni, turning to Government Exhibit for identification 345, will you describe this exhibit, please?

Mr. Burnham: Your Honor, if I may interject here, this is the first of a series of exhibits which, as far as I am able to tell—there are thirty of them, approximately, and they are all offered for the very simple proposition that there is no meaningful correlation between volume and price, volume and price earnings ratio, or volume and yield.

It is a point which was stated by Professor Friend on the stand the other day. We have considerable difficulty with, and we have serious objections to, a number of these thirty exhibits because we think the statistical technique is bad and they are used in the wrong fashion.

On the other hand, we have no quarrel with the ultimate conclusion which we understand Mr. Boni seeks to draw and, therefore, I offer to stipulate, and I believe Mr. Cox and Mr. Bushby join me in this.

I offer to stipulate to this fact, and I will read Professor

Friend's answer on direct so you will have his words. Professor Friend said:

[fol. 1155] "I think that there is no theoretical reason why there should be any significant correlation between volume and price per se. In many types of situations you would have urgent buying pressures and, therefore, volume would be associated with increases in price.

"In other situations I can think of you have urgent selling pressures, and, therefore volume would be associated with decrease in price, and I see no reason theoretically why there should be any net positive or negative correlation."

That, your Honor, is from page 1644 of the typewritten transcript. Now, with that stipulation as I see it, that makes unnecessary the following Government exhibits which have been marked for identification. 345, 347, 349, 351 to 355, 375 to 379, 381 to 385, 392 to 396 and 398 to 402.

Now, if I am in error, if any of those is offered for some other purpose then they may be relevant, but I think so long as the purpose is what I understand it to be, that this offer of a stipulation makes them irrelevant.

The Court: Will you accept that stipulation?

Mr. Metzger: No, your Honor. Counsel offered this stipulation yesterday. We considered it and we rejected it at the time.

I do not think that the proposition is fully explained without reference to the particular exhibits in reference to which counsel has adverted.

Mr. Burnham: I can do no more, your Honor.

[fol. 1156] Mr. Metzger: The limitation in the testimony is a little bit further than we are willing to go.

The Court: The Court stands recessed for ten minutes.

(A short recess was taken.)

The Court: Proceed, please.

By Mr. Metzger:

Q. Mr. Boni, would you describe Government's Exhibit for identification 345?

A. This exhibit contains three lines. The first deals with

the volume of shares traded on the New York Stock Exchange on a monthly basis, 1946 through 1958; the second deals with the turnover of that volume, the turnover being the relationship between shares traded and shares listed; and the third is a price index, again Standard & Poor's Composite Price Index.

Q. Will you turn to Government's Exhibit for identification 346, and tell us what this document is?

A. This exhibit is in two parts. The top portion deals with the entire number of shares traded as a per cent of number of shares listed.

Q. And the second column?

A. The second is the market value of shares traded as a per cent of market value of shares listed.

Mr. Metzger: I offer Government's Exhibits for identification 345 and 346.

Mr. Burnham: Objection on the ground of irrelevancy, your Honor, for the reasons stated before the recess.

The Court: Overruled.

(Said documents, so offered and received in evidence, [fol. 1157] were marked Government Exhibits 345 and 346.)

By Mr. Metzger:

Q. Mr. Boni, what does Government Exhibit 345 show with relation to the problems of this case?

Mr. Cox: I object to the form of the question, may it please the Court.

The Court: Sustained.

By Mr. Metzger:

Q. Mr. Boni, what does this exhibit go to prove, if anything?

A. This is the first of a series of exhibits designed to test the relationship between price movements and volume of shares traded.

Q. And what is that relationship?

A. It shows that there is little, if any, relationship between volume of shares traded, the turnover of those shares, and prices.

Mr. Burnham: Your Honor, may I just point out that that is the basis for our objection on relevancy grounds, because we had offered to stipulate to that very fact, that as far as volume of transactions is concerned, it had little, if any, relationship in the volume of transactions, whether the prices go up or prices go down.

The Court: Do these other exhibits refer to the same thing?

Mr. Metzger: If the Court please, these exhibits go beyond the terms of the stipulation offered by Counsel.

The Court: What else do they portray?

Mr. Metzger: The stipulation offered by Counsel, if the Court please, contained a limitation that in the event that [fol. 1158] there were sudden fluctuations in volume that they might reflect upon the price of the stock, and these exhibits will support our contention that that is not necessarily so.

Mr. Burnham: I recall only offering to stipulate to the language used by Dr. Friend, which I read in the record, and I don't recall any such limitation in that language.

Mr. Metzger: I believe the language speaks for itself.

Mr. Burnham: I think it does, but I don't think there is any such limitation in the language.

Would you point it out, please?

Mr. Metzger: "In many types of situations, you would have urgent buying pressures and, therefore, volume would be associated with increases in price.

"In other situations I can think of, you have urgent selling pressures and, therefore, volume would be associated with decrease in price."

Mr. Burnham: That is right. Price can go up on a big day or down on a big day, and you can't tell from volume whether it is going to go up or down.

That is what I understand to be the point.

Mr. Metzger: May we proceed, your Honor?

The Court: Proceed.

By Mr. Metzger:

Q. I refer you to Government Exhibit No. 347 for identification, Mr. Boni. Will you describe this document?

A. This is the computation of the correlation co-efficient between total shares traded on the New York Stock Exchange and the composite price index.

[fol. 1159] Mr. Metzger: I offer Government Exhibit for identification No. 347.

Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 347.)

By Mr. Metzger:

Q. What does this show, Mr. Boni?

A. It shows a correlation between the two of plus .6421, which I deem to be a rather low co-efficient of correlation.

Q. I refer you to Government Exhibit No. 348 for identification. Will you describe this document, Mr. Boni?

A. Yes. This is a correlation between turnover of all stocks listed on the New York Stock Exchange and Standard & Poor's composite index.

Mr. Metzger: I offer Government Exhibit for identification No. 348.

Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 348.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. This again is a computation of the correlation co-efficient between these two, and shows this time a negative correlation of minus .2218.

Q. I refer you to Government Exhibit for identification No. 349. Will you describe this document, Mr. Boni?

A. Yes. This is a study of total volume of shares traded, turnover of all shares traded—this is on the New [fol. 1160] York Stock Exchange—and Standard & Poor's common stock yields—and this is for the years 1946 through the first quarter of 1958.

Q. And this is supported by Government Exhibit for identification No. 350?

A. That is correct.

Mr. Metzger: I offer Government Exhibits numbers 349 and 350.

Mr. Burnham: Same objection.
The Court: They are admitted.

(Said documents, so offered and received in evidence were marked Government Exhibits 349 and 350.)

By Mr. Metzger:

Q. I refer you to Government Exhibit for identification No. 351——

A. Might I point out something with respect to Exhibit No. 349 before we leave that?

Q. Please do.

A. That we have the same problem here that there would be minor adjustments in the yields to reflect the changes I talked about yesterday for the years 1946 through 1951.

Q. Referring to Government Exhibit for identification No. 351, will you describe this document, Mr. Boni?

A. Yes, this is a computation of the correlation coefficient between total shares traded on the New York Stock Exchange and Standard & Poor's common stock yield.

Q. You stated with reference to Government Exhibit No. 349 that there would be some changes as to yield in 1946 through 1951?

A. That is correct.

Q. Will that affect this correlation?

A. In a minor way, yes.

Q. Will it affect whatever conclusion you may draw from this correlation?

A. No, I am sure it would not.

[fol. 1161] Mr. Metzger: I offer Government Exhibit for identification No. 351.

Mr. Burnham: Same objection.

The Court: Overruled.

(Said document, so offered and received in evidence was marked Government Exhibit 351.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni? What does this document, Government Exhibit 351, show?

A. Well, I think I read what it shows. It is a computation of the degree of relationship between these——

Q. What is that degree of relationship?

A. Oh, I am sorry. It is a negative correlation of .3857.

Q. What does that mean?

A. Well, it shows that there is an inverse relationship, that is one goes up the other goes down; and also that that relationship is very tenuous. It is an extremely low correlation co-efficient.

Q. Referring to Government Exhibit for identification No. 352, would you describe this document, Mr. Boni?

A. This is a computation and correlation between turnover of all stocks listed on the New York Stock Exchange and Standard & Poor's common stock yields.

Q. Again this refers to the yields, and would the corrections referred to before apply to this document?

A. That is correct.

Q. Would they be significant?

A. No, they would not.

Mr. Metzger: I offer Government Exhibit for identification No. 352.

[fol. 1162] Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 352.)

By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. It shows that the relationship between those two variables is practically zero. The actual figures are minus .0067.

Q. Mr. Boni, referring to Government Exhibit for identification No. 353, will you describe this document?

A. This is a comparison of volume of shares traded on the New York Stock Exchange, turnover of all shares, and the price earnings ratios for the period 1956 to the first quarter of 1958 on a quarterly basis.

Mr. Metzger: I offer Government Exhibit for identification No. 353, your Honor.

Mr. Burnham: Same objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 353.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 354, will you describe this document, please?

A. Well, again with respect to Exhibit No. 353, if I may, there will be minor corrections in the price earnings ratio between 1946 and 1951.

Q. Will they affect the meaning of this chart?

A. Not significantly.

Q. Referring to Government Exhibit for identification No. 354, will you describe this document?

[fol. 1163] A. Yes. This is a computation of the correlation between total shares traded on the New York Stock Exchange and Standard & Poor's Composite Stock Index.

Mr. Metzger: I offer Government Exhibit for identification No. 354.

Mr. Burnham: Same objection, your Honor.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 354.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. It shows a plus correlation between the two series of .2782.

Q. What is the significance of this correlation?

A. It is an extremely low correlation co-efficient and has little, if any, meaning.

Q. Referring to Government Exhibit for identification No. 355, will you describe this document, Mr. Boni?

A. It is a computation of the correlation between turnover of all stocks listed on the New York Stock Exchange and Standard and Poor's composite index, and covers the quarterly—covers the period 1946 through 1958 on a quarterly basis.

Q. You mentioned with relation to Government Exhibit No. 353 that there would be some change in the price earnings ratio?

A. That is correct.

Q. For the years 1947 through 1951. Will that affect the substance of this exhibit No. 355?

A. Yes, it would, to a minor degree.

Q. Would it affect the conclusions that you might draw from it?

A. No, it would not.

Mr. Metzger: I offer Government Exhibit No. 355.

[fol. 1164] Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 355.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. Again, it shows the extremely low degree of relationship between the two variables, the number being plus, this time, .2940.

Q. Referring to Government Exhibit for identification No. 356, will you describe this document, Mr. Boni?

A. Yes. This is a comparison of total volume of shares traded on the New York Stock Exchange compared with the changes in the Federal Reserve margin requirements.

Q. And this is supported by Government Exhibit for identification No. 357?

A. That is correct.

Mr. Metzger: I offer Government Exhibits for identification Nos. 356 and 357.

(Said documents, so offered and received in evidence, were marked Government Exhibits 356 and 357.)

By Mr. Metzger:

Q. Referring to Government Exhibit No. 356, Mr. Boni, what does this document show?

A. Well, the purpose of 356 was to examine volume in relation to margin changes for the reason that changes in margin change available supply and demand, affect the availability of supply and demand importantly and suddenly.

The exhibit shows, if we analyze it carefully, that over the long run—in other words, there may be immediate [fol. 1165] repercussions, but over any reasonable period, whether months or years, that these sudden shifts in supply

and demand occasioned by margin requirements do not have any significant effect upon volume.

Q. Referring to Government Exhibit for identification No. 358, will you describe this document, Mr. Boni?

A. The document is labeled, "Effect of Margin Changes on Volume Traded."

Actually, the document itself doesn't reveal the effect; it merely reveals the facts, and the facts have to be interpreted.

Q. What facts does it reveal?

A. The relationship of margin requirements and average volume of shares traded.

Mr. Metzger: I offer Government's Exhibit for identification 358.

(Said document, so offered and received in evidence was marked Government Exhibit 358.)

By Mr. Metzger:

Q: What does this document show, Mr. Boni?

A. Well, we have here, for example, margin requirements between April 23, 1955, and January 15, 1958. During that period the average volume of shares traded was 60 million shares. We have a decrease in that margin to 50 per cent, January 16, 1958, to May 31, 1958, where we have again 60 million shares traded.

Right above it, where you have January 5, 1955, to April 12th to 22nd, 1955, you have a volume of shares traded at 82 million. That is an average per month volume of shares against a 60 per cent margin required.

[fol. 1166] Going to the other end, where you have a 100 per cent margin required, it is true that you had considerably less shares traded; that is, you had an average of 39.6 traded; but in the succeeding period, when the margin requirements were cut to 75 per cent, February 1, 1947 to March 29, 1949, despite the decrease in the margin requirements you also have a decrease in shares traded. In other words, there is no visible relationship here between margin requirements and volume of shares traded.

These should be read in sequence. I mean it would serve no useful purpose to point out, for example, that you only had 39 million shares in 1947, whereas you had 60 million

shares in 1958, with half of the margin requirements, because the two periods are too far apart, and there were too many changes in the market itself to draw any conclusion that this was attributable to the margin requirement.

You have got to read these things in sequence to see what followed to draw any conclusions.

Q. Mr. Boni, referring to Government's Exhibit for identification 359, would you describe that document, please?

A. Yes. This tabulates the actual volume and the adjusted volume, that is, adjusted for stock splits of General Motors common stock traded on the New York Stock Exchange on a monthly basis, January, 1946, through May, 1958.

Mr. Metzger: I offer Government's Exhibit for identification 359.

(Said document, so offered and received in evidence was marked Government Exhibit 359.)

[fol. 1167] By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. Well, as I recall it, this is merely a substantiation for some of the charts which I have used either before or later. I don't recall at the moment.

Q. Do you draw any inferences from it?

A. I am sorry—I didn't hear you.

Q. Do you draw any inferences from this document?

A. No, not from the figures themselves. I would prefer to discuss them when we arrive at the point where they are on the chart; this is the basis for the subsequent documents.

Q. Referring to Government's Exhibit for identification 360, will you describe this document, please?

A. Yes. This is a tabulation of General Motors odd-lot transactions as a per cent of odd-lot transactions on an annual basis in 1946 through 1957.

Mr. Metzger: I offer Government's Exhibit for identification 360.

Mr. Burnham: Your Honor, may I ask just a couple of questions on this particular exhibit?

The Court: Very well.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, in the year 1950 General Motors had a 2-for-1 stock split, did it not?

A. I believe so.

Q. And in the year 1955, it had a 3-for-1 stock split, did it not?

A. Yes.

Q. Now, on this series of numbers in your left-hand column, under the heading "GM," you have reflected the actual numbers of shares involved in those odd-lot trans-
[fol. 1168] actions, without any adjustment for the stock split, is that not correct?

A. May I consult——

Q. I call your attention to Footnote 1. I think it appears there.

A. I am sorry. Yes, it says right there.

It is unadjusted for stock splits, that is correct.

Q. If you had adjusted for stock splits for the years 1946 through 1949, you would have multiplied the figure by six, would you not?

If there was a 3-for-1 and a 2-for-1 stock split?

A. Yes. I think it would actually have made the point that I was trying to make here even clearer if I had done so.

Q. And if you had adjusted for stock splits for the years 1951 through 1954, it would have been multiplied by three, would it not?

A. That is correct. And by the same token, Column 3 would have changed, and the Column 3 numbers would have increased, emphasizing the fact that the odd-lots of General Motors were increasing as a percentage of the total, which I consider to be very significant.

Q. In other words, Column 3 would have been for the year 1946 six times the figure 1.45 per cent?

A. That is correct.

Q. So it would have been 8.70 per cent?

A. That is right.

Q. And so on for the years 1946 through 1949, the per-

centages in Column 3 would have been six times as large as they are there?

A. Do you mind repeating that last question?

Mr. Burnham: Will the Reporter please read the question?

(Question read.)

[fol. 1169] By the Witness:

A. Yes, that is correct.

By Mr. Burnham:

Q. And for the years 1951 through 1954, the percentages would have been three times as large as they are now in this Column 3, is that correct?

Mr. Burnham: Your Honor, I object to consultations between the witness and his assistant.

The Court: Sustained.

Mr. Burnham: Will the Reporter please read the question?

(Question read.)

The Court: Are there any other questions?

Mr. Burnham: No, your Honor, I didn't hear the answer to that one.

The Court: You may answer.

By the Witness:

A. Yes, that is correct.

Mr. Burnham: Thank you.

Direct examination—(Continued)

By Mr. Metzger:

Q. Mr. Boni, has any adjustment been made in this study for stock splits in any companies, in your Column 2?

A. No.

Mr. Metzger: I offer Government's Exhibit for identification 360.

(Said document, so offered and received in evidence, was marked Government Exhibit 360.)

[fol. 1170] By Mr. Metzger:

Q. Referring to Government's Exhibit for identification 361, would you describe this document, Mr. Boni?

A. This document tabulates odd lots as percentage of total General Motors transactions for the years 1946 through 1957.

Mr. Metzger: I offer Government's Exhibit for identification 361.

(Said document, so offered and received in evidence, was marked Government Exhibit 361.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. It shows that over the period 1946 through 1957 there was a fairly stable relationship over a good part of the period, and a substantial decline for odd lots as a percentage of the total between 1946 and 1957. It is 36.9 per cent of the total in 1946, and it declined and in 1957 it was 29.3 per cent.

Q. Do you draw any conclusion from this 30 per cent average in odd lots?

A. May I refer to my notes here on this?

Q. Please do.

Mr. Tierney: What is the question?

(Question read.)

Mr. Metzger: Shown in Column 3.

Mr. Metzger: Mr. Tierney is standing, if the Court please. I am wondering if there is some reason for it.

The Court: The Court has no objection to his standing if he wishes.

[fol. 1171] By the Witness:

A. Well, this chart has several points of significance. Number 1, that the proportion of odd lots to total General Motors transactions is much greater than for the market as a whole.

Number 2, that——

Mr. Bushby: I do not understand him.

The Court: Will you speak louder, please?

By the Witness:

A. (Continuing) That the proportion of General Motors odd lot transactions as a percentage of its total shares traded is greater than that displayed by the market as a whole, as between odd lots.

Mr. Bushby: There is nothing like that on here. He is reading from something else.

The Court: Which exhibit are you referring to?

Mr. Metzger: He is referring to Exhibit 361.

Mr. Burnham: There is no such information on the chart, your Honor.

The Court: (Addressing witness.) Which one are you referring to?

The Witness: I am referring to an earlier chart, your Honor. I will find it in a moment.

The Court: Well, the question is directed to 361, isn't it?

The Witness: Yes.

By the Witness:

A. (Continuing) Well, the purpose of 361 is to make [fol. 1172] a comparison and the comparison must be made with another chart.

By Mr. Metzger:

Q. With which chart, Mr. Boni?

A. Well, I am having a little difficulty finding it, although I know it is here.

Q. May I call your attention to Government Exhibit 360?

Mr. Bushby: You lead the witness, but it does not lead him anywhere. It does not show anything.

By Mr. Metzger:

Q. May I call your attention to Government Exhibit 344, Mr. Boni?

A. I wonder if I could have a short recess to straighten this out?

Mr. Metzger: May it please the Court, may we have a short recess?

The Court: Ten minutes.

(A short recess was thereupon taken.)

The Court: Proceed, please.

By Mr. Metzger:

Q. Mr. Boni, referring again to Government Exhibit 361, you were going to try and make a comparison between those odd lots and the New York Stock Exchange on the whole.

A. Yes. We go back to Exhibit 292. There is tabulated there the annual shares traded on the New York Stock Exchange, and using 1957 as an example we find that there were 714.5 million shares traded on the New York Stock Exchange in 1957.

Of that total 122.5 million were odd lots. This represents about 17 per cent of the total for odd-lots, and compares with General Motors transactions in that year where odd lots represented 29.3 per cent of the total.

[Vol. 1173] Q. What does it mean to you, Mr. Boni?

A. It shows that on an average the interest in General Motors is greater for the small purchaser of stock, that is, the person who is dealing in odd lot shares than it is for the market as a whole.

It is one of the tests of trying to determine the character of the market for General Motors.

Q. Referring to Government Exhibit for identification No. 362, will you describe this document, Mr. Boni?

A. 362 is a tabulation of the annual number of shareholders of General Motors for the years 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification 362.

(Said document, so offered and received in evidence, was marked Government Exhibit 362.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

Mr. Bushby: Oh, now!

Mr. Tierney: It speaks for itself.

Mr. Metzger: If it please the Court, the answer to the question will show that there are points that can be determined from the exhibit that require the witness to testify.

Mr. Tierney: If he answers your question, he will tell you what is on the exhibit.

The Court: Proceed.

By the Witness:

A. Well, the large increase in shareholders in the period beginning 1955 is another indication of the breadth of the [fol. 1174] market for General Motors securities. This coincided with the stock split or the issue of the rights, all indicating the tremendous market that existed for General Motors.

Q. Well, why didn't that tremendous market exist prior to 1955?

A. Well, it did, but the fact that being able to increase the number of shareholders from 487,000 to 717,000 between 1954 and 1957, is a dramatic showing of what the potentials of this stock are.

Q. Referring again to Government Exhibit for identification 363, will you describe this document, Mr. Boni?

A. Yes. This is a comparison of General Motors' annual turnover with the New York Stock Exchange's turnover.

Mr. Metzger: I offer Government Exhibit for identification 363.

Mr. Burnham: Well, your Honor, I would like to ask just one or two questions about that one.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, on Government's Exhibit 363 you have adjusted for stock splits, have you not——

A. That is correct.

Q. (Continuing)—of General Motors? So that there the left-hand column, "Shares Traded," for the years 1946 through 1949, the figures are six times the actual number of shares traded, are they not?

A. Yes.

Q. And the years 1951 through 1954, the figures are three times the number of shares actually traded, are they not?

A. That is correct.

Q. And for the years 1950 and 1955 they are larger but [fol. 1175] by an amount that could not be determined with-

out getting figures before and after the stock split that occurred in each of those years?

A. That is correct.

Mr. Metzger: Do I presume that this exhibit is in evidence, your Honor?

The Court: I beg your pardon?

Mr. Metzger: Has this exhibit been admitted?

The Court: I have not heard any objections.

(Said document so offered and received in evidence was marked Government Exhibit 363.)

Direct examination—(Continued)

By Mr. Metzger:

Q. Mr. Boni, let us presume that for the years 1946 through 1949 we divided the GM turnover figure by six, and for the years 1951 through 1954 and at least part of 1955 we divided by three.

What effect does this have upon the significance of your exhibits?

A. It would make it more significant again because of what we were trying to show here, that the turnover of General Motors is less than on the New York Stock Exchange.

Q. So that if in 1946 we divided the figure 9.03 by six we would come up with a percentage for General Motors of approximately 1½ per cent, as opposed to a New York Stock Exchange figure of 29 per cent?

A. That is right.

Mr. Burnham: Your Honor, may I inquire just once more so we won't be left in utter confusion on this exhibit?

The Court: You may.

[fol. 1176] Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, if you were to go back to the actual figures in Column 1 you would have to do the same thing in Column 2, would you not?

A. You mean with respect to General Motors?

Q. That is correct.

A. That is right.

Q. So that you would not only divide Column 1 by 6 for those particular years, but you would also divide Column 2 by 6, would you not?

A. No, you would not divide Column 2 by 6. You would divide Column 2 with——

Q. Isn't Column 2 the average number of General Motors shares outstanding, those particular years?

A. Oh, I see what you are talking about. Yes.

Q. So you would not change the percentage in Column 3 one iota, would you?

Mr. Metzger (Addressing the witness): Would you?

By the Witness:

A. That is correct.

Mr. Burnham: Thank you.

Direct examination (Continued)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 364, will you describe this document?

A. This is a tabulation of number of General Motors' common stock listed on the New York Stock Exchange as of the end of the month, January, 1946, through May, 1958.

Mr. Metzger: I offer Government's Exhibit for identification 364.

[fol. 1177] (Said document, so offered and received in evidence, was marked Government Exhibit No. 364.)

By Mr. Metzger:

Q. Mr. Boni, turning to Government Exhibit for identification 365, would you describe this document, please?

A. This exhibit, I believe, is improperly headed as it stands now. In the title the words "General Motors" appears twice and yet, as I read the data contained, it should be "New York Stock Exchange odd-lots" and reported in odd round lots, as a percentage of total shares traded.

Q. This is then the New York Stock Exchange?

A. This is the New York Stock Exchange. What it endeavors to show is the reliability of the total figure since

the total figure excludes certain transactions made on the New York Stock Exchange with respect to odd-lots.

I was trying to test here whether that would be a distorting factor. As you can see here, it accounts for such a large amount that, in my opinion, it is not distorting.

One other change I might indicate for this: In 1948 there is obviously a miscalculation of the per cent of the total. It is marked there 76.7 and I have recalculated it and it should be 94.5.

Mr. Metzger: I offer Government Exhibit for identification No. 365.

Mr. Burnham: Has it been corrected to reflect the changes?

Mr. Metzger: The exhibit has been identified and correctly noticed by the witness' testimony and the official copy will be corrected accordingly.

Mr. Burnham: Thank you.

[fol. 1178] (Said document, so offered and received in evidence, was marked Government Exhibit No. 365.)

By Mr. Metzger:

Q. Referring to Government Exhibit for identification No. 366, will you describe this document, Mr. Boni?

A. This is a replica of the table contained in Institutional Investors and the Stock Market, dated December 28, 1956, Pages 104 and 105 thereof, which tabulates the purchases and sales of General Motors by 210 institutional investors broken down by types: Open end investment companies, closed end investment companies, fire insurance companies, and so forth.

Mr. Metzger: I offer Government Exhibit for identification No. 366.

Mr. Burnham: Just one question, your Honor.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, this is not a replica, is it? Rather, it is a selection or an excerpt from those pages, is that not correct?

A. No, I believe—I would have to check it, but think these figures are exactly as shown in that report.

Q. The figures are taken from the report, but you said the exhibit was a replica.

A. Well, if you object to the word replica, I will use a different word. This is an excerpt of these numbers from that study.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 366.)

[fol. 1179] Direct examination—(Continued)

By Mr. Metzger:

Q. Mr. Boni, what does this exhibit show?

A. Well, it is another measure, another statistic available as to the demand for General Motors by institutional buyers.

It is an indication of their demand.

Q. Referring to Government Exhibit for identification No. 367, will you describe this document, Mr. Boni?

A. This is the same type of a tabulation, the same source, but this time on the basis of dollar values, and it shows that on the balance between——

Mr. Metzger: Before you get to that, I offer Government Exhibit No. 367 for identification into evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit 367.)

By Mr. Metzger:

Q. What does it show?

A. It shows that on balance, January 1953 through October 1955, there was roughly $44,000,000 of General Motors purchased by institutional buyers, this sample of institutional buyers.

Q. You say 44 million purchased?

A. On balance, I said.

Q. Mr. Boni, referring to Government Exhibits 366 and 367, for the record, would you indicate the source of these exhibits?

A. Yes. I think I gave the complete source for Exhibit 366. It is the same source for 367, except that the page

numbers are 182 and 183 instead of 104 and 105, as in the other exhibits.

Q. What is the source?

A. It is the Senate Committee on Currency and Banking [fol. 1180] report on the stock market, entitled, Institutional Investors and the Stock Market, 1953—I think 1953 to 1955 is in the title, and the report is dated December 28, 1956.

Q. Referring to Government Exhibit for identification number 368, will you describe this document, Mr. Boni?

A. Yes. This is a tabulation of General Motors shares distributed to employees annually 1946 through 1957, indicating the amount purchased in any one of those years by the company and the amount distributed to employees.

Mr. Metzger: I offer Government Exhibit for identification No. 368.

Cross-examination.

By Mr. Burnham:

Mr. Burnham: Here, too, Mr. Boni, you have adjusted for stock splits by multiplying by three or six, depending on what early year was involved, is that not correct?

The Witness: I assume. That is what it says.

Q. So that for the year 1946, the figure purchased by the company, the actual number of shares purchased is one-sixth that amount or one thousand shares?

A. That would be correct.

Q. And so on through the rest of the figures?

A. That is correct.

Direct examination—(Continued)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. This shows that in the twelve-year period, 1946 to 1957, the company purchased 13,887,022 shares of the total stock——

[fol. 1181] Mr. Burnham: I object, your Honor.

By the Witness:

A. (Continuing) And that it distributed to employees 12,198,878.

Mr. Burnham: I object, because he just stated this total of 13 million did not represent the number of shares purchased, but the number of shares arrived at by some fancy multiplication in the early years.

By Mr. Metzger:

Q. Do these figures reflect adjustments for the stock splits, Mr. Boni?

A. Yes, they do.

Mr. Burnham: And not the actual purchases, is that correct?

The Witness: And not the actual purchases in those years, but to determine, to make the series comparable in terms of what the shares outstanding in 1957 were, that type of adjustment would be necessary.

(Said document, so offered and received in evidence was marked Government Exhibit 368.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 369, will you describe that document, please?

A. Yes. This again is a tabulation of the number and market value of General Motors shares held as Treasury stock annually 1946 through 1957, and these numbers are adjusted for stock splits.

Mr. Metzger: I offer Government Exhibit for identification No. 369.

[fol. 1182] Cross-examination—(Continued)

By Mr. Burnham:

Q. Mr. Boni, on that exhibit you show the source as General Motors Annual Reports.

The General Motors Annual Report for 1946 did not show 47,700 shares, did it, as the number held?

A. I would have to check it, Mr. Burnham; I don't remember.

Q. Now you have adjusted this for stock splits, haven't you?

A. Yes.

Q. And in 1946 General Motors certainly was not multiplying by 6 the number of shares it held in the Treasury in anticipation of splits in 1950 and 1955, was it?

Mr. Metzger: If it please the Court, Mr. Burnham is objecting to a mathematical computation which is laid out on the table.

Mr. Burnham: I am objecting to the exhibit because it does not show what it purports to show——

The Witness: I think that——

By Mr. Burnham:

Q. Will you answer my question?
Read the question, please.

(Question read.)

A. (Continuing) I think that what we are trying to look for here is more than just a cold number. I am looking at the fact that in 1957 they distributed 2,177,000. In order for me to compare what they did in 1946, I would have to make the adjustment, otherwise you could criticize it the other way; that I am comparing a different kind of a security between 1946 and 1957.

Mr. Burnham: I object to the exhibit, your Honor, on the ground that it does not correctly state the facts.

[fol. 1183] The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 369.)

Direct examination—(Continued)

By Mr. Metzger:

Q. Referring to Government Exhibit for identification No. 370, will you describe this document for us?

A. This is a monthly tabulation of the short interest in General Motors, picking the high month and the low month for each of the years 1946 through 1957.

Let me clarify that a little bit. What this shows is that in 1946, the monthly high of the short interest was in March of that year, when there were 166,000 shares, when the short interest aggregated 166,000 shares, and that the low in that year was 121,000 shares, and that the low was during the month of June.

This provides a range in effect for the year. It shows the high and low for the year.

Q. And this document is supported by Government Exhibit for identification 370-A?

A. That is correct.

Mr. Metzger: I offer Government's Exhibits for identification 370 and 370-A.

Mr. Burnham: Your Honor, I object to those on the ground that there has been no showing of relevancy on any issue in this case at all.

Mr. Metzger: If the Court desires, I will ask the witness some questions on it.

The Court: Very well.

[fol. 1184] By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. One of the important tests in evaluating the strength of a stock in terms of a possible decline is an examination of the short interest. That short interest represents a measure of the latent demand for the security.

Let me see if I can't explain in a little more of a simple fashion.

When an investor or a speculator goes short of stock, he must borrow that stock. He is able to do that through his broker. He does not own the security, but he feels that he can buy it at a later date at a lower price. And what he does, he asks his broker to sell the stock short and borrow it on his behalf.

Now what that does immediately is to set up a demand for that stock, in the sense that the moment the stock goes down, anyone who has a short interest in the stock immediately becomes a potential buyer. The larger the short interest, the stronger the stock is; and what this was intended to do was to evaluate General Motors' strength in the market, and the potential buying power that had come about from the existence of the short interest.

The Court: It is admitted.

(Said documents, so offered and received in evidence were marked Government's Exhibits 370 and 370-A)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 371, will you describe this document, please?

A. This is a comparison of General Motors volume of [fol. 1185] transactions monthly, January, 1946 through May, 1958, on the basis of actual shares traded, on the basis of adjustments for stock splits, and a comparison with total shares traded on the New York Stock Exchange.

Mr. Metzger: I offer Government Exhibit for identification 371.

(Said document, so offered and received in evidence, was marked Government Exhibit 371.)

By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. Well, it shows first that in a general way there is a conformance in the pattern of General Motors volume traded with that of all shares traded; and it shows very clearly that unless—or let us put it this way—if we are to evaluate the movements in volume for General Motors stock that we must first take out of those movements the effects of the general market. And it is referred to later on here as a deflation of General Motors volume.

Q. Mr. Boni, referring to Government Exhibit for identification 372, would you describe this document, please?

A. Yes. This document compares the volume of General Motors common stock, adjusted for stock splits, with the same volume deflated to eliminate the effect of the general market.

Q. And this is supported by Schedule 33, Government Exhibit 373?

A. That is right.

Mr. Metzger: I offer Government Exhibits for identification 372 and 373.

Mr. Burnham: Your Honor, may I inquire of the witness on these exhibits?

The Court: You may.

[fol. 1186] Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, turning to Government Exhibit 373, which is Schedule 33, that schedule in turn depends upon Schedules 20 and 31 for the General Motors figures, does it not?

A. I believe so.

Q. And Schedule 20 is Government Exhibit 342; Schedule 31 is Government Exhibit 359.

Would you turn then to Government Exhibit 359, Schedule 31?

A. Yes.

Q. The data with respect to General Motors on that exhibit relates just to round lots, reported round lot sales, does it not?

I call your attention to the note in the lower left.

A. Yes, it says so, and I presume it is correct.

Q. You prepared it, didn't you, or had it prepared under your supervision?

A. That is correct.

Q. And you vouch for its correctness, do you not?

A. I do.

Q. As far as the General Motors figures are concerned, the top figures are actual figures, are they not—the top half of the sheet—the actual number of shares traded?

A. Yes.

Q. And the lower figures are adjusted for stock splits by that process of multiplication by 6 or by 3 in the various years?

A. That is correct.

Q. Now which of those figures did you use in your computation on Schedule 33, which is Government's Exhibit 373, for identification?

A. I would have to check that, Mr. Burnham.

Q. I call your attention to the caption, and the last four words in the caption "Adjusted for Stock Splits."

[fol. 1187] Does that help you?

A. Which exhibit are your referring to—373?

Q. Schedule 33, which is Government's Exhibit 373, for identification.

A. No. That doesn't tell me what happened, which series we used. I would have to go in back of this exhibit

and see what the numerator was and what the denominator was.

Q. Will you please tell me whether you used adjusted General Motors figures or the actual General Motors figures?

A. This says "Adjusted"; and where we have used "Adjusted," as I recall the preparation we have meant "Adjusted for Stock Splits."

Q. And this says "Adjusted for Stock Splits"?

A. Yes. But I take it your question is a different one. You are questioning as to what happened to the odd lots, isn't that correct?

Q. No, I am sorry, I am not.

A. Then I am confused.

Q. If you are confused, I beg your pardon; then my questions have not been clear.

I am merely trying to ascertain whether it is not true that you used for your General Motors figures in compiling Schedule 33 the volume of trading adjusted for stock splits by multiplying by 6 or by 3 in the years prior to the splits?

A. That is correct.

Q. So it is true, is it not, Mr. Boni, that if you had used the actual volume of trading instead of the adjusted——

Let me withdraw that question one moment.

With respect to Schedule 20, which is Government's Exhibit 342, "Total Shares Traded on the New York Stock Exchange," there has been no adjustment for stock splits [fol. 1188] in other stocks in those figures, has there?

A. You are talking about the New York Stock Exchange?

Q. That is correct.

A. No.

Q. Those figures reflect the actual number of shares traded in each of those months?

A. That is right.

Q. And they include, in addition to reported round lot sales, non-reported round lot sales and odd lot purchases and sales?

A. That is correct.

Q. And they also include trading in preferred stocks, do they not?

A. That is correct.

Q. Now you arrived at the figures on Schedule 33, which is Government's Exhibit 373 for identification, by a process of dividing the adjusted General Motors figures?

A. That is right.

Q. By the New York Stock Exchange figures for the same month, is that correct?

A. That is correct.

Q. And if you had used actual General Motors figures, the number of shares actually reported as round lot sales, isn't it true that for the years 1946 through 1949 every one of your percentages on Schedule 33 would be only one-sixth as large?

A. Yes, but it would invalidate the line, Mr. Burnham.

Q. No. Just please answer my question.

Is that true?

A. Yes, it is true, but it would invalidate the line.

I think you have to have the record of what I was doing here if you are going to understand this exhibit.

Q. That is also true, is it not, down through 1950 up [fol. 1189] to the point of the stock split?

A. That is correct; otherwise I would have a broken line there, at different levels; and the reason for the different levels would be that I had failed to take into account the stock splits.

Q. And from that 2 for 1 stock split on up to some time in 1951, when there was a 3 for 1 stock split, the percentages would be one-third as large, if you had used actuals, would they not?

A. That is correct. Sure.

Q. And if you had used those actuals, your figure or your line on your chart for "Adjusted Volume Deflated"—and I am now talking about Exhibit 26, which is Government's Exhibit 372—would more properly be labeled, "Actual Volume Deflated," would it not?

A. Yes, if that is what you are trying to do.

Q. And if you had plotted, computed and plotted an actual volume deflated, you would have had a rising trend, instead of a falling trend, would you not?

A. No. On that I disagree. In order to judge a trend, we must have the figures in the trend comparable, because then you would have a broken line; and in order to look at the trend you would have to make the adjustment if you were any kind of a statistician at all.

Q. But in January of 1946 the total number of shares traded on the New York Stock Exchange, without any adjustment for stock splits, was 69,182,000, was it not?

A. I am not following you, but I am ready to accept your reading.

Q. Well, your table, which is Government's Exhibit No. 342, shows that.

A. All right, I am with you now.

[fol. 1190] And in that same month, the actual number of General Motors shares traded on the New York Stock Exchange in reported round lots was 236,600, was it not?

A. Yes.

Q. And 236,600 is only about thirty-five hundredths of one per cent?

A. Yes, but it has no relationship to the figures in the later years, because what I am comparing here is the trading earlier with the trading of 1957, and, if you are going to talk about the shares in 1957, without making that adjustment, I don't quite see what you get.

Q. One last question——

A. Yes.

Q. So that it will be absolutely clear:

You did adjust the General Motors shares of stock for stock splits?

A. Yes, deliberately so.

Q. And you did not adjust the New York Stock Exchange figures for splits of other stock?

A. That is right, and the other has an explanation, if I may make it,—that to adjust that total for all the stock splits would be proper. The amount—and in doing things of this nature, the first thing we have to take into account is whether the work involved is commensurate with what you are going to get.

When you are dealing with a large aggregate as you are in the New York Stock Exchange, to make the necessary changes it could be done; and under certain conditions it might serve some purpose; but as far as this particular study was concerned, it would serve no useful purpose, because again, I wasn't looking to establish whether General Motors was eight per cent or ten per cent, or what part of the market in this particular study. What I was [fol. 1191] trying to determine in this particular study is

how the General Motors volume responded over time, in relation to the market as a whole.

Q. You were interested in the trend?

A. I was interested in the trend. Indeed, I was.

What you suggest would not change the trend enough to make any difference on the chart. It is the same kind of an adjustment as we had yesterday, where it was true—the figures were improperly compiled; but there is enough evidence right on the chart to tell me that the correct computation of those figures would only do certain things.

This applies to most of these charts, Mr. Burnham. We are dealing here with tremendous numbers; we are dealing here with an endeavor to evaluate a situation where the pursuit of these de minimus adjustments could have kept this study going on forever. What we attempted to do here was, in the interest of common sense, not to refine figures ad infinitum, but to get something that we could rely upon to make a judgment decision here.

And as far as I am concerned, some of your questions, some of your apparent criticisms, might be justified, but I am merely making this speech, and I hope you don't misunderstand it, to give you the background in which we were operating—what the objectives were here.

The objectives were not to make all those refinements. We were aware of most of the questions you asked; but these were matters of judgment.

[fol. 1192] Somebody else may have decided to do the things you suggest here, but we just didn't feel that it was necessary, and that is why we did it this way.

Q. In the interest of accuracy, how do you know that would have been de minimus?

A. How do I know?

I spent a lifetime in this business, Mr. Burnham.

Q. No. I am just asking about that particular figure.

A. And I base this upon my experience, upon my knowledge of the figures, upon my ability to read numbers better by a common sense approach than by anything my staff goes through and telling me whether a decimal point was slightly off. I think, in my judgment, the overall review of these figures and applying common sense in seeing whether they are reasonable is a lot more important to me than the fact that my staff has checked it. And, strangely enough, my experience over the years has been that despite

the great care that you exercise by setting up all sorts of checking procedures that in the end, over the years, our seniors and our top people have caught more errors after the checking—and errors of significance, strangely enough—by knowing "this is what we might expect here", and being able to quickly perceive that something was wrong.

Mr. Burnham: Your Honor, I object to the admission of Government's Exhibits 372 and 373 on the grounds that what was done was improper and the witness has said so.

Mr. Metzger: If it please the Court, Mr. Burnham [fol. 1193] has said what the witness has done was improper. He has gone to each of these exhibits on which he bases it, and says if you did this and you did that and you did that, as you said you did, you would come up with this as you said you did.

Mr. Burnham is objecting, apparently to a conclusion that as far as the exhibit is concerned is perfectly observable from the surface.

The Court: Overruled.

(Said documents, so offered and received in evidence were marked Government Exhibits 372 and 373.)

Direct examination.

By Mr. Metzger:

Q. Referring to Government Exhibit for identification No. 374, would you describe this document, Mr. Boni?

A. Yes. This is, again, a tabulation of annual data of monthly General Motors adjusted volume, which means adjusted for stock splits, the yearly high and low, compared with the monthly General Motors volume as a per cent of total shares traded on the New York Stock Exchange, again showing the yearly high and the yearly low.

Q. These figures are adjusted for stock splits?

A. These figures are adjusted for stock splits.

Mr. Metzger: I offer Government Exhibit for identification number 374.

(Said document, so offered and received in evidence was marked Government Exhibit 374.)

[fol. 1194] By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. Well, it shows a number of things.

It shows that the highest volume attained for General Motors was in 1950 when 26 million shares were traded.

Mr. Burnham: Your Honor, I object to his referring to that as the number of shares traded when he has already said he adjusted this for stock splits and has multiplied this by 6 or by 3 to get that figure.

Mr. Metzger: The witness is supplying the characterization. So is Mr. Burnham. I fail to see what difference it makes so long as it is understood from the chart that they are both using different terms that apply to the same thing.

The Court: Overruled.

The Witness: I might also—do you want me to continue, Mr. Metzger?

By Mr. Metzger:

Q. Yes, please.

A. I might say here that it was again necessary to make the adjustment for stock splits because the important thing it shows here is the decline in General Motors volume in 1957 when only 6,690,000 shares were traded.

Now, also, had we not made such an adjustment, we would then be immediately open to criticism that you can't compare the shares traded in 1950 with the shares traded in 1957 because you had a stock split.

[fol. 1195] Now, let me proceed with the analysis.

It also shows that the high point of the year in 1950 was 4,089,000 shares. It also shows that the low point was attained in 1957, when we had a low of 398,000 and a high of 777,000.

In general, this enables one by careful analysis to judge the trend of General Motors, again in relation to the problem here. There are going to be a certain number of shares distributed, and what does this market look like?

Now, the lower portion of this exhibit is perhaps the more important one because there we have looked at General Motors in terms of the market as a whole. In other words, what is this in relation to the market.

We find that again it ranges from a high of four per cent

in 1950 to a very low point in 1957 of .94. In other words, General Motors volume accounts for less than one per cent of the total volume or accounted for less than one per cent of the total volume in 1957.

Again we have the high points and low points. In 1957 that ranged from 1.201 to a low of .736.

Now, if that number were a very substantial number, it would again indicate that there was a lot more saturation for General Motors than the low number. I am not prepared to say at what point this becomes significant. I think we have got to look at these in very broad terms.

As far as I am concerned, the .94 is an obviously low percentage, which is what I was interested in.

Mr. Burnham: Your Honor, it now develops that [fol. 1196] this exhibit perpetuates the same error as the last one, in that he is comparing adjusted General Motors figures with unadjusted New York Stock Exchange figures, and therefore I would like to add the same objection I made as to the last exhibit.

The Court: Overruled.

The Court stands recessed.

(Whereupon a recess was taken in the above-entitled case until 2:00 o'clock p.m. of the same day, Wednesday, March 4, 1959.)

[fol. 1197] Before Hon. Walter J. LaBuy, Wednesday, March 4, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

The Clerk: Case on trial.

The Court: Proceed.

ALFRED BONI, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination—(Continued)

By Mr. Metzger:

Q. Mr. Boni, referring to Government's Exhibit for identification, 375, will you describe this document, please?

A. This was a comparison on a monthly basis of the closing prices of General Motors common stock, the volume of General Motors common stock traded, adjusted for stocks split monthly, January, 1946 through May, 1958.

Mr. Metzger: I offer Government's Exhibit 375.

Mr. Burnham: Your Honor, this starts another series of exhibits that I spoke of this morning that could have been obviated by the stipulation which was offered and, therefore, I object on the ground of relevancy.

[fol. 1198] This is not relevant in the light of our proffered stipulation. This series relates to General Motors specifically. The other series related to the stock exchange generally.

The Court: Overruled.

(Said document, so offered and received in evidence was marked Government Exhibit 375.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 376, will you describe this document, please?

A. This is a computation of the correlation between adjusted volume of General Motors common stock traded, in other words, adjusted for stock splits, and closing prices of General Motors.

Mr. Metzger: I offer Government's Exhibit 376.

Mr. Burnham: Same objection.

The Court: Overruled.

(Said document, so offered and received in evidence was marked Government Exhibit 376.)

By Mr. Metzger:

Q. Will you tell us what this document shows, Mr. Boni?

A. This shows that indeed there is practically no relationship and, to the extent that there is, it is an inverse one; a minus correlation coefficient of .2537, which is, in terms of a coefficient value extremely low.

Q. Mr. Boni, referring to Government Exhibit for identification 377, will you describe this document, please?

A. This is the adjusted and deflated closing prices of [fol. 1199] General Motors common stock compared with

adjusted and deflated volume of General Motors common stock traded.

Q. Deflated in relation to what?

A. In the case of prices, it is deflated to eliminate the effect of general prices. In the case of volume it is deflated to eliminate the effects of the general volume.

Mr. Metzger: I offer Government Exhibit 377 for identification.

Mr. Burnham: In addition to the relevancy objection to this one, your Honor, we also object to the use of adjusted deflated volume on the ground that that is a misleading and inaccurate figure.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 377.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 378, will you describe this document, please?

A. Yes. It is a computation of the correlation, of the degree of correlation between the adjusted and deflated volume of General Motors with its adjusted and deflated price.

Mr. Metzger: I offer Government's Exhibit 378.

Mr. Burnham: Same objection, your Honor. Both of them.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 378.)

By Mr. Metzger:

Q. Will you tell us what this document shows, Mr. Boni?

A. Again, it shows no significant relationship with a [fol. 1200] minus correlation coefficient of .5521, which is not significant in this kind of a computation.

Q. Referring to Government Exhibit for identification 379, will you describe this document, Mr. Boni?

A. This exhibit traces the course of the volume of General Motors common stock traded, adjusted for stock splits, deflated by total shares traded on the New York Stock

Exchange and the yields on General Motors common stock as adjusted.

Mr. Metzger: I offer Government's Exhibit for identification 379.

Mr. Burnham: The same objections, your Honor, to the adjusted deflated volume, as well as relevancy.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 379.)

By Mr. Metzger:

Q. Mr. Boni, I refer to Government Exhibit for identification 380. I gather that is the underlying data for 379?

A. That is correct.

Mr. Metzger: I offer Government's Exhibit for identification 380.

Mr. Burnham: The same two objections, and that brings to mind, too, your Honor, I should have objected to the last one, on the ground that he is using this General Motors yield with the extras taken out, and I would like that objection applied to both this one and the last one.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 380.)

[fol. 1201] By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 381, will you describe this document, please?

A. Yes. This is a computation of the correlation between adjusted volume of General Motors common stock traded and the yields on its stock, plotted quarterly through the first quarter of 1946 from the first quarter of 1958.

Mr. Metzger: I offer Government Exhibit for identification 381.

Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 381.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. It shows that the correlation between these two series is relatively insignificant, a correlation coefficient of .0746.

Q. Mr. Boni, referring to Government Exhibit for identification 382, will you describe this document, please?

A. This is a correlation between the adjusted and deflated volume of General Motors common stock traded and yields on General Motors common stock, adjusted to eliminate the extras.

Mr. Metzger: I offer Government Exhibit for identification 382.

Mr. Burnham: The same set of objections, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 382.)

[fol. 1202] By Mr. Metzger:

Q. Will you tell us what this document shows, Mr. Boni?

A. Once again, it shows little, if any, correlation, a correlation coefficient of plus .2285.

Q. Mr. Boni, referring to Government Exhibit for identification 383, will you describe this document, please?

A. This is a plotting on a quarterly basis of General Motors common stock traded, adjusted for stock splits, deflated by total shares traded on the New York Stock Exchange, and the price earnings ratios of General Motors common stock over that period.

Mr. Metzger: I offer Government's Exhibit for identification 383.

Mr. Burnham: Same objections, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 383.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government's Exhibit for identification 384, would you describe this document, please?

A. This is the computation of the correlation between adjusted volume of General Motors common stock, traded,

and price earnings ratios for that company, quarterly, first quarter of 1946 to the first quarter of 1958.

Mr. Metzger: I offer Government's Exhibit for identification 384.

Mr. Burnham: Same objection.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 384.)

[fol. 1203] By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. This document, in fact, shows an inverse relationship, although not a significant one, with the correlation coefficient of minus .0227.

Q. Mr. Boni, referring to Government's Exhibit for identification 385, will you describe this document, please?

A. Yes. This is the computation of the correlation between adjusted and deflated volume of General Motors common stock traded and price earnings ratios of General Motors common stock.

Mr. Metzger: I offer Government's Exhibit for identification 385.

Mr. Burnham: Same objection, your Honor.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 385.)

By Mr. Metzger:

Q. What does this document show, Mr. Boni?

A. This computation shows just about a zero relationship between the two, or a plus .0014.

Q. Mr. Boni, referring to Government's Exhibit for identification 386, would you describe this document, please?

A. Yes. This marks a series of exhibits depicting the same type of measurements for du Pont; and the first one deals with du Pont, volume of du Pont common stock traded, actual, and adjusted for stock splits, and total volume of stock traded on the New York Stock Exchange.

Q. And this is supported by Government's Exhibit for identification 387?

A. That is correct.

[fol. 1204] Mr. Metzger: I offer Government's Exhibits for identification 386 and 387.

Mr. Gribbon: Your Honor, may the record show that du Pont has a standing objection to this next series of exhibits?

The Court: You may have a standing objection.

Mr. Burnham: Will ours remain standing objections, your Honor?

The Court: Yes, you will both have standing objections.

Mr. Metzger: Is this document accepted, your Honor?

The Court: Yes.

(Said documents, so offered and received in evidence, were marked Government Exhibits 386 and 387.)

By Mr. Metzger:

Q. Mr. Boni, will you tell me what this document shows, Exhibit 386?

A. Exhibit 386 traces the monthly volume of du Pont common stock traded, actual, and adjusted for stock splits, and the total volume of shares traded on the New York Stock Exchange.

Q. What does it show?

A. Well, once again, as in the case of General Motors, it shows a general conformance in pattern in a good part of the time, and indicates that a proper analysis would involve the deflating of du Pont's transactions by the total New York Stock Exchange trades in order to reveal what the real trend in du Pont's trades shows.

Q. Mr. Boni, referring to Government Exhibit 388 for identification, will you describe this document, please?

[fol. 1205] A. Yes. This is one more monthly plotting, this time of the volume of du Pont common stock traded, adjusted for stock splits, and comparing it with the adjusted volume of du Pont common stocks deflated by total shares traded on the New York Stock Exchange.

Mr. Metzger: I offer Government's Exhibit for identification 388.

(Said document, so offered and received in evidence, was marked Government Exhibit 388.)

By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. Well, this document now shows the real course of du Pont volume, and it shows that commencing in 1949 other than for intermediate moves upward, there was a declining trend, whereas between 1946 and 1949 there was a rising trend.

Q. Mr. Boni, referring to Government's Exhibit for identification 389, would you describe this document, please?

A. This sets forth the du Pont odd-lot purchases and sales as a percentage of total du Pont transactions.

Mr. Metzger: I offer Government's Exhibit for identification 389.

(Said document, so offered and received in evidence, was marked Government's Exhibit 389.)

By Mr. Metzger:

Q. Will you tell us what this document shows, Mr. Boni?

A. Well, it shows that between 1946, when odd-lots as a percentage of total of du Pont transactions were 51.6 per cent, they now had declined—they declined fairly steadily until 1957, when they were 35.3 per cent of the total.

[fol. 1206] Q. Mr. Boni, do you draw any significance from the percentage that is presently transacted in odd lots?

A. I would like to refer to my notes on this, Mr. Metzger.

Well, it shows that from an odd-lot standpoint, that the percentage of total transactions was even greater than that for General Motors.

General Motors, you will recall, showed the odd-lot was a percentage of total—well, comparing this with General Motors, Government Exhibit 361, you find in 1946 General Motors was about 36.9 per cent, that is, the odd-lots, as compared to 51 per cent for du Pont; and in 1957, General Motors was 29 per cent, as compared to 35 per cent for du Pont; and, as a whole, or on the whole, over the period, this relationship persisted, showing that General Motors had an odd-lot market that was greater in terms of its own capitalization..

Q. You mean du Pont?

A. Rather, du Pont, yes, that is right.

Q. Mr. Boni, referring to Government's Exhibit 390 for identification, would you describe this document, please?

A. Yes. This is a computation of du Pont odd-lot sales as a percentage of total odd-lots for the period 1946 through 1957.

Mr. Metzger: I offer Government's Exhibit for identification 390.

(Said document, so offered and received in evidence, was marked Government Exhibit 390.)

By Mr. Metzger:

Q. Mr. Boni, what does this document show?

A. Well, it shows that du Pont's proportions to total odd-[fol. 1207] lot purchases and sales is relatively insignificant. It grows in the period 1946 through 1951, or through 1950, which is the high point, from 26/100ths of one per cent to 95/100ths of one per cent; then declines into 1957, when it represented 36/100ths of the total.

Q. Referring to Government's Exhibit 391, for identification, Mr. Boni, would you describe this document, please?

A. Yes. This is again a companion chart or a companion computation to the one made for General Motors, showing monthly du Pont adjusted volume, the yearly high and low, the monthly du Pont volume as a per cent of annual shares traded on the New York Stock Exchange, also showing the high and low.

Mr. Metzger: I offer Government's Exhibit for identification 391.

(Said document, so offered and received in evidence, was marked Government Exhibit 391.)

By Mr. Metzger:

Q. Mr. Boni, what does this exhibit show?

A. Well, it shows that as a percentage of total transactions in the market place, the annual transactions, in 1957 it was 11/100ths of the total, and in 1946 it was 20/100ths of the annual total, with a decline in the latter years of the period that we have here.

It also permits one to evaluate not only the aggregate for the year, but the high and low; and here we find that

the highest point was attained in 1949, when it was about three-quarters of a per cent. The high declined in 1957, when it was only 13/100ths of one per cent. The low ranged from three-eighths of a per cent in 1949 to eight-one hundredths of a per cent in 1957.

[fol. 1208] Q. Mr. Boni, referring to Government Exhibit for identification number 392, would you describe this document, please?

A. This compares a deflated volume of——

Q. Deflated?

A. I am sorry. The adjusted volume of du Pont and the adjusted prices of du Pont for the periods monthly, for the period 1946 to May 1958.

Mr. Metzger: I offer Government Exhibit for identification number 392.

Mr. Burnham: Your Honor, on this group of 11 exhibits, numbers 392 through 402, we have the same problems as on the ones relating to General Motors, numbers 375 through 385.

May we have the same standing objection about the relevancy and the rest?

The Court: Yes. The record will show that they are all received, except those that are denied.

(Said document, so offered and received in evidence was marked Government Exhibit 392.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit No. 393, would you describe this document, please?

A. Yes. This is the computation of the extent of the relationship between the adjusted volume of du Pont common stock and the adjusted closing prices of du Pont.

Mr. Metzger: I offer Government Exhibit for identification number 393.

(Said document, so offered and received in evidence was marked Government Exhibit 393.)

[fol. 1209] By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification, No. 394, would you describe this document, please?

A. This is a comparison between the adjusted and deflated closing prices of du Pont compared with the adjusted and deflated volume, monthly, January, 1946 through May, 1958.

Mr. Metzger: I offer Government Exhibit for identification number 394.

(Said document, so offered and received in evidence was marked Government Exhibit 394.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification number 395, would you describe this document, please?

A. This a computation of the extent of the relationship between adjusted and deflated volume of du Pont common stock traded and the deflated closing prices of du Pont common stock monthly, January, 1946 through May, 1958.

Mr. Metzger: I offer Government Exhibit No. 395 into evidence.

(Said document, so offered and received in evidence was marked Government Exhibit 395.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 396, will you describe this document, please?

A. This is a comparison of the volume of du Pont common stock traded, adjusted for stock splits and deflated by the total shares traded on the New York Stock Exchange and the yields on du Pont common stock.

[fol. 1210] Mr. Metzger: I offer Government Exhibit for identification No. 396.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 396.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 397, is this an underlying document for Government Exhibit No. 396?

A. Yes, it is.

Mr. Metzger: I offer Government's Exhibit for identification No. 397.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 397.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 398, will you describe this document, please?

A. This is a computation of the extent of the correlation between adjusted volume of du Pont common stock traded and yields on du Pont stock computed quarterly, from the first quarter of 1946 through the first quarter of 1958.

Mr. Metzger: I offer Government Exhibit for identification No. 398.

(Said document, so offered and received in evidence, was marked Government's Exhibit 398.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit No. 399 for identification, will you describe this document, please?

A. Yes. This is a computation of the extent of the correlation between adjusted and deflated volume of du Pont common stock traded and yields on du Pont common stock.

[fol. 1211] Mr. Metzger: I offer Government Exhibit for identification No. 399.

(Said document, so offered and received, was marked Government's Exhibit No. 399.)

By Mr. Metzger:

Q. Referring to Government Exhibit for identification No. 400, would you describe this document, please?

A. Yes. This traces on a quarterly basis the volume of du Pont common stock traded, adjusted for stock splits, deflated by total shares traded on the New York Stock Exchange and the price earnings ratio of du Pont common stock.

Mr. Metzger: I offer Government Exhibit for identification No. 400.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 400.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit No. 401 for identification, would you describe that document, please?

A. Yes. This is a computation of the correlation between adjusted volume of du Pont common stock traded, and price earnings ratio of that stock, quarterly, from the first quarter of 1946 through the first quarter of 1958.

Mr. Metzger: I offer Government Exhibit for identification No. 401.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 401.)

By Mr. Metzger:

Q. Referring to Government Exhibit for identification No. 402, Mr. Boni, would you describe this document, [fol. 1212] please?

A. Yes. This computes the correlation between adjusted and deflated volume of du Pont common stock traded and price earnings ratios of du Pont common stock quarterly, from the first quarter of 1946 through the first quarter of 1958.

Mr. Metzger: I offer Government Exhibit for identification No. 402.

(Said document, so offered and received in evidence, was marked Government Exhibit 402.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 403, will you describe this document, please?

A. This tabulates the market value of public offerings of new corporate equity issues as a percentage of market value of total shares traded on the New York Stock Exchange annually, 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification No. 403.

(Said document, so offered and received in evidence, was marked Government Exhibit 403.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 404, would you describe this document, please?

A. This shows market value of total shares traded as the per cent of market value of shares listed on the New York Stock Exchange annually, 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification No. 404.

(Said document, so offered and received in evidence, was marked Government Exhibit 404.)

[fol. 1213] By Mr. Metzger:

Q. Mr. Boni, what is the significance of this document?

A. It provides a frame of reference to measure the value of stocks traded with the average value of the shares listed. It is another test of turnover. If you will recall, there were a number of similar exhibits dealing with the shares traded as against shares listed.

This is the same concept, but looking at it from a dollar standpoint rather that from a share standpoint. Just as the turnover showed a decline in trend when measured by shares, it shows somewhat of a decline in trend here when measured by dollar value.

Q. Mr. Boni, referring to Government Exhibit for identification No. 405, will you describe this document, please?

A. This measures in terms of dollar value again the value of General Motors shares listed as a per cent of market value of all shares listed on the New York Stock Exchange annually, 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification No. 405.

(Said document, so offered and received in evidence, was marked Government Exhibit 405.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification No. 406, will you describe this document, please?
A. These are the monthly data reflecting the market value of General Motors and du Pont common stock listed on the New York Stock Exchange monthly, January 1946 through May 1958.

[fol. 1214] Mr. Metzger: I offer Government Exhibit for identification No. 406.

Mr. Burnham: Your Honor, I have two questions on this.

Cross Examination:—(Continued)

By Mr. Burnham:

Q. Mr. Boni, the General Motors figures on this exhibit relate to round lots traded, do they not?
A. No, this is listed.

Mr. Burnham: I am sorry. I withdraw the question.

Direct Examination:—(Continued)

(Said document, so offered and received in evidence, was marked Government Exhibit 406.)

Mr. Metzger: We have a Schedule 51 in the original table, which was missed in the numbering, which will be Government Exhibit No. 406-A.

(Thereupon said document was marked Government Exhibit 406-A, for identification.).

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit 406-A, will you describe this document, please?
A. Yes. This lists the changes in the number of shares for du Pont from the period January 1946 through May 1958, the "Actual" column representing the actual shares listed and the second column marked "Adjusted" showing what happens when you make the adjustment for the stock split.

Mr. Metzger: I offer Government Exhibit for identification No. 406-A.

[fol. 1215] (Said document, so offered and received in evidence, was marked Government Exhibit 406-A.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification number 407, would you describe this document, please?

A. Yes. This is a comparison on a monthly basis of the market value of General Motors common stock traded with the market value of total shares traded on the New York Stock Exchange monthly, January 1946 through May 1958.

Mr. Metzger: I offer Government Exhibit for identification number 407.

Mr. Burnham: Your Honor, this is the one on which I meant to ask a question, if I may have your indulgence.

Cross-examination.

By Mr. Burnham:

Q. Mr. Boni, on this one your General Motors figures relate to round lots traded in General Motors, is that correct?

A. Yes, that is correct.

Q. And the New York Stock Exchange figures with which you compare it relate to reported round lots, unreported round lots, odd lots, purchases and sales and also preferred stocks, do they not?

A. That is correct.

Mr. Burnham: I object to the exhibit, your Honor, on the ground that he is comparing apples and oranges. They are not the same thing.

[fol. 1216] Direct Examination:—(Continued)

By Mr. Metzger:

Q. Mr. Boni, do you mind describing what you are comparing?

A. Well, I am measuring the value of General Motors shares traded in comparison with the total value of all shares, and obviously in making the final judgment here, one must take into account that this procedure tends to understate in some degree that percentage.

The Court: Objection overruled.

(Said document, so offered and received in evidence was marked Government Exhibit 407.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 408, will you describe this document, please?

A. Yes, this is a monthly tabulation of the market value of General Motors and du Pont common stock traded on the New York Stock Exchange, monthly, from January 1946 through May of 1958, and these represent the underlying data to Exhibit 407; or some of them.

Q. Schedules 52 and 53 are numbered Exhibits 408-A and 408-B. Mr. Boni, referring to Government's Exhibit for identification 408-A, would you describe this document, please?

A. This shows the high, low, and average of the high and low prices of General Motors common stock traded on the New York Stock Exchange monthly from January 1946 through May of 1958.

Mr. Metzger: I offer Government Exhibit for identification 408-A.

(Said document, so offered and received in evidence was marked Government Exhibit 408-A.)

[fol. 1217] By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 408-B, would you describe this?

A. This is the same as Exhibit 408-A, for du Pont common stock. It is the high and the low, and the average of the high and the low, in terms of the value per shares traded.

Mr. Metzger: I offer Government Exhibit for identification 408-B.

(Said document, so offered and received in evidence was marked Government Exhibit 408-B.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 409, would you describe this document, please?

A. This is a monthly tabulation of the market valuation of General Motors and the du Pont common stock traded, as a percentage of the market value of the total shares traded on the New York Stock Exchange monthly from January 1946 to May 1958.

Mr. Metzger: I offer Government Exhibit for identification 409.

Mr. Burnham: The same objection as to Government's Exhibit 407.

The Court: Overruled.

(Said document so offered and received in evidence was marked Government Exhibit 409.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit for identification 410, would you describe this, please?

A. This is a tabulation of the monthly General Motors [fol. 1218] dollar trading volume as a percentage of all shares traded on the New York Stock Exchange showing the yearly high and low, from 1946 through 1957.

Mr. Metzger: I offer Government Exhibit for identification 410.

(Said document so offered and received in evidence was marked Government Exhibit 410.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government Exhibit 411 for identification, would you describe this document, please?

A. This measures the market value of du Pont shares listed as a percentage of the market value of all shares listed on the New York Stock Exchange annually from March, 1946 through 1957.

Mr. Metzger: I offer Government's Exhibit 411.

(Said document, so offered and received in evidence was marked Government Exhibit 411.)

By Mr. Metzger:

Q. Mr. Boni, referring to Government's Exhibit 412, will you describe this document, please?

A. Yes, it is a comparison of the market value of du Pont common stocks traded with the market value of total shares traded on the New York Stock Exchange monthly from January, 1946 through May, 1958.

Mr. Metzger: I offer Government's Exhibit 412.

Mr. Burnham: The same objection as to 407.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 412.)

[fol. 1219] By Mr. Metzger:

Q. Mr. Boni, referring to Government's Exhibit for identification 413, would you describe this document, please?

A. Yes, these data are taken from Government Exhibit 409 and show the range and the proportion of the value of du Pont shares traded to the value of all shares traded for the years 1946 through 1957.

Mr. Metzger: I offer Government's Exhibit for identification 413.

(Said document, so offered and received in evidence was marked Government Exhibit 413.)

By Mr. Metzger:

Q. As to Schedule 14 in the original study, would you turn to that schedule, Mr. Boni. That is Government Exhibit 323-A for identification.

Would you describe this document please, Mr. Boni?

A. That shows the actual dividend payments per share of General Motors and du Pont common stock quarterly from the second quarter of 1945 through the first quarter of 1958, and it also includes the various notations contained in Standard & Poor's Corporations Annual Dividend Record with respect to those dividends.

Mr. Metzger: I offer Government's Exhibit for identification 323-A.

(Said document, so offered and received in evidence was marked Government Exhibit 323-A.)

Mr. Metzger: With the Court's indulgence I would like a ten minute recess before continuing.

The Court: Court stands recessed.

(A short recess was taken.)

[fol. 1220] By Mr. Metzger:

Q. Mr. Boni, with relation to the study you have made, and with the exhibits that you have placed in evidence, in a general manner what conclusions have you reached?

A. Well, when you say, "in a general manner," I am not sure what you mean.

The Court: The question is too general, counsel.

By Mr. Metzger:

Q. Without reading your conclusion, Mr. Boni, can you give us the conclusion that you have reached with regard to this matter?

A. Yes. I think I tried to state it yesterday morning.

Q. You may refer to your notes, where your recollection fails.

A. I think I stated yesterday morning that I came to the conclusion, based upon all of this evidence, which we accumulated, and the careful weighing of it, that in my best judgment this divestiture could be accomplished without any dire consequences to either du Pont, to the value of du Pont securities, or to General Motors securities.

Q. What do you mean by "dire," Mr. Boni?

A. Well, I think that properly executed, circumscribed by several safeguards which I have considered, that this could be done over the long run—I am not talking about any day-to-day movements in price now—but other than for possible short term problems, there would be no measurable decline in the value of the securities.

Q. What specific conclusions did you reach that enabled you to reach this general conclusion?

A. Well, I have written out in as careful a manner as I [fol. 1221] could, with as careful a choice of words as possible, so as to keep my meaning clear, some forty-two reasons for this, and I would like to read them.

Mr. Tierney: If the Court please, I object to the witness reading them.

The Court: Sustained.

Mr. Metzger: If it please the Court, I would like to make a statement for the record on that point.

In response to a request by the Department of Justice, the management consultant firm of Boni, Watkins, Jason & Company was called upon to make a study of the relationships of price to volume for du Pont and General Motors.

This study was completed on August 18, 1958, and copies were sent to all of the parties to this action the next month.

The study was in two parts: Volume 1 and 2.

Volume 2 contained some thirty-eight exhibits and fifty-six schedules. Its computations and conclusions involved literally hundreds of thousands of calculations. As a purely random sample, I have selected Exhibit 1 with 178 separate statistics cited, Exhibit 23 as a graph containing 144 points of reference, and Schedule 16 has 199 separate statistics cited.

Volume 1 is a 110-page carefully reasoned economic thesis relating to the general conclusion that there is no significant causal relationship between the volume of trading in these two stocks and their respective prices. Each word in the study was carefully weighed before being selected.

Further, the study, when recast in more convenient form for presentation to this Court, was separated from some [fol. 1222] of its larger internal statistical tables, which now form 26 supplementary exhibits to Volume 2.

Nonetheless, the study still contains numerous references to statistical information on virtually every page, and upon which these conclusions have been based.

Despite the difficulties inherent in casting these complex concepts, the conclusions, carefully developed over a period of months, into different language than that conceived and the virtual impossibility of committing to memory in their proper order each of these said conclusions, it is the contention of the defendant that the witness be not permitted to read from his prepared study.

I think it is a fair question to ask of this proposed limitation, "For what purpose is it sought?"

In the case of expert testimony, present recollection cannot be as vivid or as valuable as past recollection recorded, particularly of a voluminous study prepared over a long period of time.

The defense cannot object that they have not had an opportunity to cross examine. Indeed, the very contrary is true. The defendants have had this study for some six months, in which they have been afforded an opportunity, which I am sure they have exercised, to go over this study in fine detail.

It was for this reason that the Government gave them that opportunity. A study of the market and of the forces bearing upon the price of securities in that market is by its nature so complex, and the conclusions reached so involved, that in fairness it was felt necessary to afford all parties ample opportunity to examine the material and re- [fol. 1223] flect over a long period of time upon the significance of its component parts.

Accordingly, the defendants were given this study in September last.

Wigmore has referred to the subject of expert witness testimony in the following fashion, and this is citing from Section 787, the 1957 Edition:

> "In many cases, especially where an expert witness upon a subject of scientific knowledge has made an investigation or analysis and is called to testify, it makes for his own lucidity and accuracy and for better comprehension and evaluation of his testimony if he first reads his written report, stating in precise terms his observations and inferences.
>
> "This procedure should be freely permitted. It goes slightly beyond the technical rule for the use of memoranda of past recollection, but that rule is a mere precautionary one. Here the policy of shedding the greatest light on the subject requires flexible liberty to use this method.
>
> "The Committee on Evidence Acts of the National Conference of Commissioners Uniform State Laws has employed this liberal practice in the Uniform Act of Composite Reports."

And in Section 1385-A referring to the subject of an expert reading from a report prepared before-hand, he continues:

> "So long as the witness is at the trial subject to cross examination, there cannot be a sound objection to this form of delivering his testimony. In particular, he may read a report prepared beforehand. The report's statements themselves were indeed not subjected to cross examination at the time of their com- [fol. 1224] position, but they are now subject to it, and that is enough. The case is the same as though the witness should give an uninterrupted oral narrative for his direct examination, being afterward subjected to cross examination.
>
> "Whether a witness delivers his direct testimony with or without interrogation by the party calling him is merely a matter of the mode of narration and does not affect the present principle.
>
> "In view of the speed, lucidity and general satisfaction which is often to be obtained, especially with expert witnesses on matters of evidence, this form of testimony should be encouraged. Statutes or rules of court both in England and the United States have provided for it."

Before continuing with the text, I would like to refer briefly to Defendant General Motors memorandum filed yesterday, in which they indicated some statutes which they conceived to be contrary to this point.

Controlling in this matter is Section 43-(a) of the Federal Rules of Civil Procedure, which states that the rule of evidence which is most liberal is the one to use in this Federal Court. In other words, if the Federal Rules allow it, or if these rules allow it, or if the State law allows it, the most liberal procedure is to be followed. Therefore, any citations by the defendants of Illinois cases is not controlling, if the system may be adopted in the Federal Courts.

To continue:

The method of presentation proposed by the defendants [fol. 1225] cannot but have a somewhat distorting effect on important economic data, upon which, in part, this Court must base its formula for relief from the violation of law found to exist in this case. The rights of none of the

parties are affected by a reading presentation, and quite the reverse is true where a presentation by present recollection is required, in that the Court might not then have before it all the facts it needs to bring about a restoration of competitive conditions.

Mr. Metzger: In the light of the fact, your Honor, that I was going to request for this witness an adjournment of his cross examination until tomorrow morning, because the witness has expressed concern for his physical condition, I request that this witness' direct be suspended until such time.

Mr. Cox: Well, if the Court please, as to Mr. Metzger's last request, can't we one way or another conclude the direct this afternoon? I have no objection if the witness feels that he would be stronger and in better condition in the morning, to adjourn his cross. I would like to have the direct concluded.

The Court: Well, is there any further direct, other than these?

Mr. Metzger: These conclusions?

The Court: The forty-two conclusions? Would that conclude your direct?

Mr. Metzger: Yes, it would.

The Court: Were these tendered to the defendants?

Mr. Metzger: Yes, they were, your Honor.

The Court: When?

[fol. 1226] Mr. Metzger: September last.

The Court: Well, are these 42 conclusions a part of this report?

Mr. Metzger: A part of Volume 1 of that report, sir, which is not in evidence.

The Court: Well, I think since it is a part of the report and was delivered to the defendants, then I would be inclined to allow the witness to read them.

Mr. Metzger: Thank you, your Honor.

The Court: Now, can you do that now and finish it up?

Mr. Metzger: Yes, he can.

Mr. Cox: May I make a suggestion, Mr. Metzger. Why wouldn't it be possible just to have them copied into the record and saying, "These are the conclusions of the witness?"

The Court: That would be satisfactory.

Mr. Metzger: That would be satisfactory to the Government, your Honor.

Mr. Cox: Would that be satisfactory to the other defendants?

(No response.)

(Which said conclusions are as follows:)

"(1) Whether measured by price, yield, or price-earnings ratio, a general homogeneity of movement prevails among the three major segments, or components, of the stock market, i.e., industrials, rails, and utilities.

"(2) Both dividends and earnings exert a strong influence on, and together are largely determinative of, the relative levels of common stock prices. Since general economic conditions are reflected in the activity and profitability of every company, these factors serve, in turn, to [fol. 1227] tie together in a generally consistent pattern the rel.. ve price movements of specific stocks.

"(3) The current interest rate, or price of money in the investment market, acts as a common denominator to all investment values and exerts an important influence on the absolute level of stock prices contributing thereby to the homogeneity of movement among the various segments of the securities market as a whole.

"(4) While a clear homogeneity of price movement exists between stocks in the chemical group (excluding DD) and the stock market as a whole, the similarity of price movements of the motor group (excluding GM) and in the stock market as a whole ends after mid-1953.

"(5) Analysis indicates that the divergence in the price movement of the motor group (excluding GM) from that of the stock market as a whole, commencing in 1953, is attributable to internal factors affecting the several members of the industry, as well as the industry as a whole.

"(6) Despite occasional temporary contrary movements, the course of GM prices discloses a strong similarity in pattern to that of the market as a whole.

"(7) Analysis of the relative price behavior of GM around nine critical dates, four relating to changes in its capital structure and five reflecting major steps in the antitrust litigation involving DD and related companies, fails to reveal any significant changes in its relative price behavior traceable to these events.

"(8) The movements in GM yield (after GM dividends are adjusted for 'extras') tend to conform with those in the stock market as a whole.

"(9) The spread between the yield on GM (after adjustment for 'extras') and the average yield in the stock mar- [fol. 1228] ket as a whole ranges between plus 1.95 percentage points and minus 0.04 percentage point. For the entire period reviewed, the yield on GM averaged 5.84 per cent, compared with an average of 5.30 per cent for the stock market as a whole.

"(10) The pattern of movements of the GM price-earnings ratio conforms closely with that of the stock market as a whole. In 1956 and 1957 the stock market appraised GM relatively highly, since it continued to price the company's stock on a higher level relative to current earnings than it did listed stocks generally, despite the parlous condition of the automobile industry.

"(11) The pattern of movement of DD stock prices generally conforms to that of the stock market as a whole. Barring serious internal maladjustments or spectacular developments affecting DD stock specifically, this relationship may be expected to continue.

"(12) The stock of DD is priced to yield substantially less than the average yield for the stock market as a whole. The patterns of the two series are strikingly similar, indicating once more the major role played by the price of money as a stock price determinant. The spread between the yield on DD and the average yield in the stock market as a whole has ranged from a minus 0.46 of a percentage point to a minus 2.56 percentage points. Over the entire twelve-year period, the average yield in the stock market as a whole exceeded that on DD by 1.21 percentage points.

"(13) The pattern of movements of the DD price-earnings ratio conforms reasonably closely to that of the stock market as a whole. Also noteworthy is the customarily higher ratio for DD than for the market as a whole. Once [fol. 1229] more, the underlying factor acting as a primary determinant of the ratio is the capitalization process whereby established earning capacity and dividend payments are converted into market prices consonant with the price of money.

"(14) The movements of stock prices of DD trace a pattern which is very similar to that of stock price movements

of other members of the chemical industry. To the extent that variations are indicated, it may be concluded that they are attributable primarily to internal factors affecting the relative current and potential earning power of DD, on the one hand, and of the several other members of the industry, on the other hand.

"(15) In the period 1946 through 1957 the number of shares traded, annually, on the NYSE ranged from a low of 336.6 million in 1946 to a high of 839.5 million in 1955.

"(16) Persuasive statistical evidence supports the conclusion that the supply of stocks in the market is being immobilized by the increasing importance of individual investors making long-term investments and by the expanding acquisitions of institutional investors. With respect to the first mentioned factor, the evidence is provided by the upward trend in recent years of the absolute and relative volume of odd-lot transactions, resulting from organized encouragement of small buyers to enter the market, by the downward trend of turnover ratios, and by the upward trend of member trading.

"(17) The thinning supply of stocks in the market is also evidenced by studies made on behalf of the Committee on Banking and Currency of the United States Senate relating to the acquisitions of institutional buyers of common stocks.

[fol. 1230] "(18) The short interest provides a 'cushion' to a declining market. The size of the short interest displays no discernible trend. In the period under review it averaged about the equivalent of the average daily volume of trading.

"(19) Little, if any, correlation exists between fluctuations in trading volume and fluctuations in prices, yields, or price-earning ratios.

"(20) Over the long run, changes in trading volume are not closely associated with changes in margin requirements.

"(21) The NYSE accounts for approximately 80 per cent of the GM common stock sales made on registered exchanges. No data are available regarding the extent of GM sales on the 'over-the-counter' market.

"(22) Odd-lot transactions constitute an important part of GM transactions on the NYSE, accounting for approximately 30 per cent of the total. In contrast, the proportion

of total odd-lot sales consisting of odd-lot transactions in GM is only about two per cent.

"(23) The number of GM shareholders increased substantially after 1954, from 487,639 in that year to 717,746 in 1957. An important factor in this increase in the number of GM shareholders was the 1955 3-for-1 stock split-up.

"(24) The rate of turnover of GM shares is markedly lower than that of the market as a whole. In both cases, the rate has declined substantially since 1946.

"(25) During the 34-month period, January 1953 through October 1955, a sample of 210 institutional investors accounted for 7.7 per cent, and their sales 2.0 per cent, of the total transactions in GM on the NYSE. On balance, these institutional investors increased their GM holdings in this interval at a cost exceeding $44 million.

[fol. 1231] "(26) Another factor contributing to the diminishing supply of GM stock in the market is its acquisition of its own stock to meet commitments under various bonus and option plans for its officers and employees. In the period 1946 through 1957, GM distributed in excess of 12 million shares to officers and employees. At the end of 1957 GM held in its treasury more than 2 million shares, valued at more than $87 million, which it had acquired in the open market.

"(27) Contributing to the price stability of GM shares is the cutomarily large short position, substantially greater than that in the market as a whole.

"(28) Changes in the volume of trading in GM are closely related to those in the market as a whole. It is clear that the influences shaping the course of trading volume as a whole serve in large measure to determine fluctuations in GM trading volume.

"(29) In the 12-year period under review, the monthly volume of trading in GM (adjusted for stock splits) ranged from a low of 398.6 thousand shares to a high of 4,089.6 thousand shares. Annual volume ranged from 6.69 million shares to 26.84 million shares

"(30) The proportion of total shares traded annually on the NYSE consisting of GM shares ranged from a low of 0.94 per cent in 1957 to a high of 4.10 per cent in 1950. On a monthly basis, the range was from 0.736 per cent to 7.569 per cent.

"(31) Comparison of price and volume movements of GM with those in the market as a whole, shows no significant relationship between the two series. Similar comparisons of GM shares with the stock market as a whole [fol. 1232] with respect to the relationship between volume and yields, as well as between volume and price-earnings ratio, provide no better results.

"(32) Despite intermittent periods of divergent movement, substantial correspondence exists between the course of trading volume in DD and in the market as a whole.

"(33) Odd-lot trading in DD comprises an even larger proportion of the total than in the case of GM. In 1957, for example, odd-lot transactions comprised 35.3 per cent of total DD transactions.

"(34) The annual volume of trading in DD over the 12-year period reviewed ranged from a low of 816.4 thousand shares in 1957 to a high of 2,125.6 thousand shares in 1950. On a monthly basis, the range was from 41.9 thousand shares to 271.3 thousand shares.

"(35) The proportion of total shares traded, annually, on the NYSE consisting of DD shares ranged from a low of 0.11 per cent in 1957 to a high of 0.57 per cent in 1949. On a monthly basis, the range was from 0.079 per cent to 0.752 per cent.

"(36) Comparisons of DD and the market as a whole with respect to the relationship between the pattern of fluctuation in the volume of trading and that in price, yield, and price-earnings ratio movements once more revealed the absence of any significant relationships, leading to the conclusion, among others, that volume fluctuations are not a determinant of stock price movements, or *vice versa*.

"(37) Public offerings of new corporate equity issues are relatively small and quite inadequate to provide an outlet for the increasing volume of funds seeking investment in equities. In 1957, such new offerings represented about 10 per cent of the aggregate market value of shares traded on the NYSE.

[fol. 1233] "(38) The ratio of annual dollar trading volume to the aggregate market value of shares listed has been declining. Taken in conjunction with the fact that the rate of turnover (shares traded ÷ shares listed) has also been declining, this circumstance leads to the conclusion that stocks are moving 'out of circulation,' i.e., into

the hands of long-term investors as distinguished from speculators seeking a short-term gain.

"(39) The aggregate market value of GM shares outstanding comprises a persistently increasing proportion of the total market value of all listed stocks.

"(40) The proportion of total dollar trading volume consisting of the value of GM shares traded ranged from a monthly low of 0.706 per cent in 1953 to a monthly high of 3.739 per cent in 1950.

"(41) The aggregate market value of DD shares outstanding comprises, like that of GM shares, a persistently increasing proportion of the total market value of all shares listed on the NYSE.

"(42) The proportion of total dollar trading volume consisting of the value of DD shares traded ranged from a monthly low of 0.231 per cent in 1946 to a monthly high of 1.607 per cent in 1949."

Mr. Metzger: That concludes the direct examination of this witness. For the remainder of the afternoon, at your Honor's convenience, we will go to another part of our evidence.

The Court: Do you want to excuse this witness for the balance of the day?

Mr. Metzger: Yes, your Honor.

The Court: Very well, he is excused.

(Witness excused.)

[fol. 1234] OFFERS IN EVIDENCE

Mr. Ludlow: May it please the Court, the Government desires now to offer certain documents, some of which have been before the Court before, but for one reason or another, have been deferred. Many of them were deferred because of Mr. Emerson's inability to identify them, and so forth.

These things have been resolved now.

Mr. Tierney: If the Court please, may we have just a short conference with counsel?

The Court: Yes.

Mr. Tierney: It may be that we may want——

The Court: Do you suggest a recess?

Mr. Tierney: Let's have a short recess.

Mr. Cowen: For about ten minutes.

The Court: The Court stands recessed for ten minutes.

(A short recess taken.)

Mr. Ludlow: The first documents, your Honor, are documents that have been identified as Government exhibits for identification 13, 14 and 15.

Decision was reserved on these documents pending identification of intials on document 14.

Mr. Emerson has now identified the initials as being those of Mr. Perry E. Hall, who was formerly identified as a member of the firm.

Therefore, I reoffer Government Exhibits 13, 14 and 15.

The Court: Any objection?

Mr. Cox: No objection.

The Court: They are received.

[fol. 1235] Mr. Bushby: The same standing objection.

The Court: Yes.

(Said documents, so offered and received in evidence were marked Government Exhibits 13, 14 and 15.)

Mr. Ludlow: The offers of Government Exhibits for identification 17, 18, 19, 20 and 21 were withheld pending the identification of the dates for which the price quotations were obtained.

Mr. Emerson has stated that the dates applicable are the printed dates on the right hand corner of these pages.

Therefore, I offer Government exhibits for identification 17, 18, 19, 20 and 21 into evidence.

The Court: It is understood they are all admitted except those that are denied.

(Said documents, so offered and received in evidence were marked Government Exhibits 17, 18, 19, 20 and 21.)

Mr. Ludlow: Government Exhibit No. 27 was received in evidence.

I would like to state for the record that Mr. Emerson has stated that the document, Government Exhibit 27, was prepared by one of his employees, Mr. St. Germain.

The offer of Government Exhibits No. 28 and 29 for identification was withheld pending identification of the parent source.

Mr. Emerson reports that these documents were prepared by Mr. St. Germain of his firm. Therefore, I offer Government Exhibits 28 and 29.

[fol. 1236] (Said documents, so offered and received in evidence were marked Government Exhibits 28 and 29.)

Mr. Ludlow: The offer of Government exhibit for identification No. 99 was withheld pending identification of the issue for which the tabulation was prepared.

Mr. Emerson has stated that this was a document prepared in connection with the Socony-Mobil rights offering.

These tabulations, your Honor, are tabulations offered as documents prepared in connection with particular issues and not for the actual data concerning the issues that Morgan Stanley did not manage.

With that qualification, I offer Government Exhibit No. 99.

(Said document, so offered and received in evidence, was marked Government Exhibit 99.)

Mr. Ludlow: Government Exhibit for identification No. 103 was withheld for the same reason.

Mr. Emerson has stated that it was prepared in connection with the offering of Royal Dutch.

With the same qualification as before stated, I offer Government Exhibit No. 103.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 103.)

Mr. Ludlow: Government Exhibit for identification No. 123 is a price chart for the General Electric Company debenture issue. The basic document in that series is in evidence as Government Exhibit No. 122.

This is a Morgan Stanley document bearing numbers [fol. 1237] 262 to 265 and has been identified as 123. I offer Government Exhibit for identification No. 123.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 123.)

Mr. Ludlow: I ask that the reporter mark for identification a chart entitled Weekly Prices of American Can Company Common Stock, 1951 to 1952.

(Said document was marked Government Exhibit No. 414 for identification.)

Mr. Ludlow: The document has been marked Government Exhibit 414 for identification. This is a part of the American Can Company issue, the basic document which is in evidence.

I offer Government Exhibit for identification No. 414.

Mr. Cox: Would you defer that until we can find out where it was prepared?

Mr. Ludlow: I will withdraw that offer.

Government Exhibit for identification No. 42, entitled, American Telephone & Telegraph Company, 26-year five per cent debentures, bearing Morgan Stanley numbers 334, 335, was identified by Mr. Emerson, and the document was, through inadvertence, not offered.

At this time I offer Government Exhibit for identification No. 42.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 42.)

Mr. Ludlow: Government Exhibit No. 12, dealing with an issue of Socony Vacuum Oil Company, Incorporated capital stock, bearing Morgan Stanley numbers 639 to 644, [fol. 1238] was identified by Mr. Emerson, but was inadvertently not offered at that time.

I now offer Government Exhibit No. 12.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 12.)

Mr. Ludlow: I ask that the reporter mark for identification a document entitled, "Final Report 4,380,683 Shares General Motors Corporation Common Stock" bearing the Morgan Stanley numbers 918 through 920.

(Thereupon said document was marked Government Exhibit 415 for identification.)

Mr. Ludlow: The document has been identified as Government Exhibit for identification number 415. I offer Government Exhibit No. 415.

(Said document, so offered and received in evidence was marked Government Exhibit 415.)

Mr. Ludlow: I ask that the reporter mark for identification a series of documents which have been identified as being a part of the General Motors rights offering, documents prepared in that connection. These exhibits are referred to in Government Exhibit No. 68, which is in evidence.

The Morgan Stanley numbers on these documents are 855 and 856 through 858, 859, 860, and 861.

(Thereupon said documents were marked Government Exhibits 416 through 420 for identification.)

Mr. Ludlow: These documents have been marked for [fol. 1239] identification Government Exhibits 416 through 420, and are offered as documents prepared in connection with the General Motors rights offering prepared by Morgan Stanley. They are offered for that purpose and not for the proof of the data pertaining to issues not managed by Morgan Stanley.

(Said documents, so offered and received in evidence were marked Government Exhibits 416 through 420.)

Mr. Ludlow: I ask the reporter to mark for identification a document bearing the Morgan Stanley numbers 312 and 313.

(Thereupon said documents were marked Government Exhibits 421 and 422 for identification.)

Mr. Ludlow: These have been marked Government exhibits for identification number 421 and 422. They have been identified as documents prepared by Morgan Stanley in connection with the General Motors secondary offering of 1956, and are offered for that purpose and not for the purpose of proving the data pertaining to issues not managed by Morgan Stanley.

(Said documents, so offered and received in evidence were marked Government Exhibits 421 and 422.)

Mr. Ludlow: I ask the reporter to mark for identification charts bearing Morgan Stanley numbers 198, 199, 200 and 201.

(Thereupon said documents were marked Government Exhibits 423 through 426 for identification.)

[fol. 1240] Morgan Stanley No. 198 is Government Exhibit 423; 199 is 424; 200 is 425. Morgan Stanley No. 201 is Government Exhibit for identification No. 426.

I offer these documents as documents which were prepared in connection with the IBM offering, prepared by Morgan Stanley, but not for the accuracy of the data pertaining to issues not managed by Morgan Stanley.

(Said documents, so offered and received in evidence, were marked Government Exhibits 423, 424, 425 and 426.)

Mr. Ludlow: I ask the reporter to mark for identification a memorandum entitled, "Memorandum Regarding Operation of the Layoff Plan under Rule X10B8, Securities Exchange Act of 1934." Morgan Stanley numbers are 112 through 117.

(Said document was marked Government Exhibit 427 for identification.)

Mr. Ludlow: The document has been identified as Government Exhibit for identification 427.

I offer it as a document prepared in connection with the Royal Dutch offering, prepared by Morgan Stanley, but not offered for the proof of the data concerning issues not managed by Morgan Stanley.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 427.)

Mr. Ludlow: I ask the reporter to mark for identification, documents bearing Morgan Stanley numbers 344 and 345.

[fol. 1241] (Thereupon said documents were marked Government Exhibits 428 and 429 for identification.)

Mr. Ludlow: Morgan Stanley No. 344 has been marked Government Exhibit for identification 428. Morgan Stanley No. 345 has been marked Government Exhibit for identification No. 429.

I offer these documents as having been prepared in connection with the Royal Dutch offering, but not for the accuracy of the data concerning issues not managed by Morgan Stanley.

(Said documents, so offered and received in evidence, were marked Government Exhibits Nos. 428 and 429.)

Mr. Ludlow: I will ask the Reporter to mark for identification a document dated February 23, 1956, Memorandum for John D. Lockton, bearing Morgan Stanley Numbers 220 through 236.

(Thereupon said document was marked Government Exhibit 430, for identification.)

Mr. Ludlow: I will ask the Reporter to mark for identification a series of charts bearing Morgan Stanley Numbers 237 through 254.

(Thereupon said document was marked Government Exhibit 431, for identification.)

Mr. Ludlow: These are documents prepared by Morgan Stanley in connection with General Electric debenture issue, the basic document of which is Government Exhibit 122.

I offer Government's Exhibits for identification 430 and 431 as documents prepared for the General Electric de- [fol. 1242] benture issue, but not for the accuracy of the data for others.

(Said documents, so offered and received in evidence, were marked Government Exhibits 430 and 431.)

Mr. Ludlow: I ask that the Reporter mark for identification Interrogatories propounded to defendant General Motors Corporation.

(Thereupon said document was marked Government Exhibit 432, for identification.)

Mr. Ludlow: The document has been marked Government Exhibit for identification 432.

I offer Government Exhibit 432.

(Said document, so offered and received in evidence, was marked Government Exhibit 432.)

Mr. Ludlow: I ask the Reporter to mark for identification a document, entitled, "Answer of General Motors Corporation to Certain of the Interrogatories Propounded by the Plaintiff."

(Thereupon said document was marked Government Exhibit 433, for identification.)

Mr. Ludlow: The document is identified as Government's Exhibit 433, for identification.

I offer Exhibit 433.

(Said document, so offered and received in evidence, was marked Government Exhibit 433.)

Mr. Ludlow: I ask the Reporter to mark for identification the Answer of Christiana Securities Company to Interrogatories filed.

(Thereupon said document was marked Government Exhibit 434, for identification.)

[fol. 1243] Mr. Ludlow: The Answer of Christiana Securities Company is identified as Government's Exhibit 434.

I offer Government's Exhibit 434.

(Said document, so offered and received in evidence, was marked Government Exhibit 434.)

Mr. Ludlow: I ask the Reporter to mark for identification the Answer of Delaware Realty and Investment Company to Interrogatories.

(Thereupon said document was marked Government Exhibit 435, for identification.)

Mr. Ludlow: The Answer of the Delaware Realty and Investment Company to Interrogatories is marked as Government's Exhibit for identification 435.

I offer Government's Exhibit 435, in evidence.

(Said document, so offered and received in evidence, was marked Government Exhibit 435.)

Mr. Ludlow: I ask that the Reporter mark for identification a document, entitled, "State of Delaware, 1958 Annual Report, Delaware Corporation," dealing with the Hopeton Holding Company.

(Thereupon said document was marked Government Exhibit 436, for identification.)

Mr. Ludlow: The document has been marked for identification No. 436.

I offer Government's Exhibit for identification 436.

(Said document, so offered and received in evidence, was marked Government Exhibit 436.)

Mr. Ludlow: I ask the Reporter to mark for identification a tabulation of five pages, entitled, "List of Beneficial Owners June 25, 1958, of Stock of Delaware Realty and [fol. 1244] Investment Company, showing also their beneficial ownership in common stock of Christiana Securities Company, E. I. du Pont de Nemours and Company and General Motors."

(Thereupon said document was marked Government Exhibit 437, for identification.)

Mr. Ludlow: This document has been identified as Government's Exhibit for identification No. 437.

I offer Government's Exhibit for identification 437.

(Said document, so offered and received in evidence, was marked Government Exhibit 437.)

Your Honor, several days ago the Government sought to put certain documents from the original record into the record of this case. We, of course, were not allowed to do that. We would like to designate those original documents by number in the record, if possible.

Mr. Bushby: They are in the record.

The Court: Do you have any objection?

Mr. Tierney: Yes. I think they have already been—we object. I think you have already had them identified.

Mr. Ludlow: I do not believe the numbers were stated. That is the reason I wanted to do it. We just identified the original numbers.

Mr. Tierney: Well, that is all right.

Mr. Ludlow: The original trial Government exhibit numbers that we would specifically designate for this record [fol. 1245] are Government Exhibit No. 66 from the original trial, which bears on the control of du Pont by Christiana.

Government Exhibit No. 1296 of the original trial, which lists the shares of Wilmington Trust Company stock held by members of the du Pont family.

Government Exhibit 65 of the original trial, which bears on the control of du Pont by Christiana.

Government Exhibit 68 of the original trial, which bears on the control of du Pont by Christiana.

Government Exhibit 1276, which lists the officers and directors of the Wilmington Trust Company for the period 1915 to 1949.

Government Exhibit 67 of the original trial, which bears on the control of du Pont by Christiana.

Government Exhibit 64 of the original trial, which bears on the control of du Pont by Christiana.

Mr. Burnham: What was that number?

Mr. Ludlow: 64. (Continuing)

Government Exhibit 124 of the original trial, which bears on the control of the Wilmington Trust Company by du Pont.

Your Honor, may we have a short recess?

The Court: Yes.

Mr. Reycraft: We have only one more witness in the case, excluding Mr. Boni's cross examination. I believe we can finish it in the morning, excluding Mr. Boni's cross examination. If your Honor would permit us, I think we could adjourn now.

[fols. 1246-1247] There are a few matters to be taken up.

The Court: You prefer to take an adjournment at this time?

Mr. Reycraft: Yes, sir.

The Court: Very well. Court stands recessed until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken in the above entitled cause until Thursday, March 5, 1959, at ten o'clock, a.m.)

[fol. 1248]

Transcript of Proceedings of March 5, 1959

OFFERS IN EVIDENCE

The Clerk: Case on trial.

The Court: Proceed, please.

Mr. Metzger: If it please the Court, before resuming the cross examination of Mr. Boni, I did not make a specific offer of Government Exhibit 408 yesterday, although it was discussed. I now offer Exhibit 408 for identification.

Mr. Burnham: I object on the ground of relevancy, your Honor. It has to do with short interest and apparently has no bearing on this.

The Court: Overruled.

Mr. Burnham: Oh, I beg your pardon, your Honor, I thought it was the other. I withdraw my objection.

Mr. Metzger: The objection, your Honor, is directed to Schedule 344-a, which is directed to short interest and which was not offered yesterday.

I now offer it today.

Mr. Burnham: I now make the objection that I did just a moment ago.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 408.)

Mr. Metzger: If it please the Court, at the time of Mr. Scanlon's testimony an exhibit had been prepared based upon his anticipated testimony.

When Mr. Scanlon stated a convertibility factor at variance with the prepared exhibit in those years in which a scaled convertible factor had been introduced into American Telephone & Telegraph's convertible offerings, the exhibit was not then offered.

[fol. 1249] Mr. Scanlon has since written and stated what the amount of these conversions was in dollars. Each other assumption on the exhibits prepared is based upon assumptions made by Mr. Scanlon on the stand.

Defense counsel has not had an opportunity to examine this chart at length, although they did see its predecessor.

Any objections that they might raise as to the mathematics concerned, I am willing to allow them to open the exhibit for that purpose.

But I offer conditionally American Telephone & Telegraph Company's convertible debenture on common stock offering—1946—1948——

Mr. Bushby: Oh, your Honor, I object.

Mr. Metzger: Just a moment, Mr. Bushby. I offer as Government's Exhibit—What is the next number, Mr. Reporter?

The Reporter: 451.

Mr. Metzger: —as Government's Exhibit 451, subject to defense counsel's opportunity to examine and make any objections to the assumptions made therein.

The Court: Well, the Court should reserve its ruling then until the defendants have an opportunity to examine it.

Mr. Bushby: Well, it has no validity whatever. It is nothing. I object to it.

Mr. Metzger has handed me a photostat of a letter from Mr. Scanlon with an exhibit. I do not know whether your Honor has that.

The Court: It has just been handed to me.

[fol. 1250] Mr. Bushby: Well, I do not object to the letter, the statement of the facts from Mr. Scanlon, that can go in, of course, I do not object to that at all, but I think that the exhibit is just a dream made up by somebody.

Mr. Metzger: Your Honor, if Counsel is given an opportunity to examine the testimony of Mr. Scanlon, with this document in front of him, I believe he will find that each of the assumptions stated in the exhibit are those assumptions which Mr. Scanlon made on the stand, so that there is nothing here which is not in evidence other than the letter from Mr. Scanlon to which Counsel has made no objection.

If Counsel, upon due deliberation of Mr. Scanlon's testimony then has objections, I am sure that we can meet whatever objections might be made.

Mr. Bushby: I do not want any deliberations. This thing is just a brief, an argument made up from other things in the record.

It has no validity in and of itself. It is just a brief.

Mr. Metzger: All this document is, is assumptions——

The Court: Well, I do not have that. I am looking at the wrong thing. To the letter is attached some figures. The heading is, "Proceeds From Certain Bell System Convertible Debenture Issues."

You do not object to those?

Mr. Bushby: No, sir. Those are facts; but this other thing is an economic brief, a lot of assumptions and they can put it in a brief. It has no place as an exhibit.

The Court: Well, I will reserve my ruling on this until I get a chance to read it.

Mr. Metzger: Well, as your Honor will note, there is [fol. 1251] nothing stated on this brief other than the figures. All the rest——

The Court: Proceed. Is there anything further from the Government?

Mr. Reycraft: Mr. Boni, your Honor.

Mr. Metzger: Cross examination.

ALFRED C. BONI, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination.

By Mr. Cox:

Q. Mr. Boni, in the course of the study you have testified about, did you read the proposed judgment which the Government filed in this court?

A. Yes, I did.

Q. Now, preparing to testify with respect to your study and your conclusions, did you read the testimony of the other witnesses who have been called by, and testified on behalf of, the Government in this case?

A. A Good portion of it, yes.

Q. You did not read it all?

A. I did not read it all.

Q. And you remember the names of the witnesses whose testimony you did read?

A. Yes, I think I could recall them. Would you like me to?

Q. Yes, give us those names, Mr. Boni.

A. Well, let me start sort of backwards. I was in the courtroom during most of Doctor Friend's testimony and I did not go back and read that. I think I read Professor Murray, was it of Columbia?

Q. Yes.

A. Mr. Olberg, I believe.

Q. Yes.

A. Mr. Scanlon; a good portion of Mr. Emerson's testimony.

[fol. 1252] Q. Yes.

A. There were others. If you were to mention the names I could give you a yes or no.

Q. Did you read any of the testimony of Mr. Townsend?

A. I was present in the courtroom when Mr. Townsend testified.

Q. Mr. Sheets?

A. Yes.

Q. Mr. Boulton?

A. Yes.

Q. Mr. Boni, at Page 1036 of the transcript, in the course of your direct examination, in discussing the scope of your study, you said, "Based on a study of the primary market and not including any consideration of the secondary market—"

Q. Do you recall that statement?

A. Yes, I do.

Q. What do you mean by the primary market?

A. The registered exchanges.

Q. The stock exchanges?

A. Stock exchanges.

Q. And what do you mean by the secondary market?

A. I mean such issues as are offered not through the regular machinery of the exchange, but through investment bankers, brokers, et cetera.

Q. Now, you told us that your study was directed to the question of what effect on the market price of General Motors the sale of 63 million shares of General Motors would have in some fixed period of time, is that correct?

A. That is correct.

Q. Now does your reference to the primary market mean that your study was directed to the question, and simply to the question whether the 63 million shares could be sold on the registered stock exchanges of the country?

A. That is correct.

[fol. 1253] Q. And you concluded, I take it, subject to the limitations that you stated in your direct testimony, that within a stated period of time, either ten years or a somewhat longer period, that number of shares, 63 million shares, could be sold on the stock exchanges of the country, with only the consequences that you described in your final opinion?

A. That is right. And I think I testified to the effect that the 63 million shares represented really the maximum number of shares that——

Q. But that was your conclusion—that 63 million shares could be——

A. (Interrupting)—could be absorbed.

Q. (Continuing)—could be absorbed on the stock exchanges of the Country?

A. That is correct.

Q. By sales through members of those stock exchanges?

A. That is right.

Q. And without regard to any secondary offerings or underwritings, or anything of that kind?

A. That is right, and without regard to the foreign market.

Q. So that your conclusion was that subject to the limitations you stated, those sales could be made on the exchanges in the stated period even were there no secondary offerings of General Motors?

A. Yes, and I think I had some other qualification, namely, I made no attempt to appraise what the automobile industry might do over the coming years—what the economy might do.

Q. Or what demand there might be otherwise in the market of equity securities?

A. In the market itself, on the general assumption that we would have a status quo for the next ten years.

Q. I understood that to be what you said.

A. Yes.

Q. Mr. Boni, had you studied the operations of the New York Stock Exchange?

A. Well, I don't quite know what you mean by that question.

[fol. 1254] Q. Are you familiar with the way the exchange operates?

A. Yes, I am familiar, in a general way.

Q. How is the level of prices on the New York Stock Exchange determined?

A. It is determined by bids and offerings. In other words, we have buyers and sellers.

The Exchange is a place where the buyers come in and put a price—if they don't put a price, they want to buy on the open market. Nevertheless, it is a meeting place of the buyers and sellers, where the price essentially is set by what the buyers want and what the sellers offer; and then there comes a meeting of the minds, so to speak.

Q. Would you agree that the prices are determined by the operation of supply and demand?

A. Obviously, sir.

Q. That is right?

A. Of course.

Q. Do you have any opinion on whether the prices of securities in the over the counter markets are also determined by supply and demand?

A. Oh, largely so.

Q. Now, I understood you to say in your direct testimony, Dr. Boni, that, in your opinion, earnings and dividends are, in general, the controlling factors in determining the relative level of the prices of common stocks. Is this a correct statement of your opinion?

A. Yes, it is the over-all statement. I think I also tried to point out that there would be variations; in other words, that a given dividend would not necessarily produce the same price for all stocks; but it was because that dividend in turn is evaluated by the investor, he is willing to pay less for some types of securities than others because of the differentials of the risk factor and other factors, and his evaluation of future earnings.

But, by and large—by and large—the underlying motive [fol. 1255] is, "What were the earnings in the past? What were the dividends in the past?" And, "Are they likely to increase, decrease, or stay the same?"

But this is the common denominator; it is the common denominator that makes the securities on the stock exchange competitive not only with other markets, but also with other types of investment, because the investor then has the choice, "Shall I buy real estate, or shall I buy a common stock?"

And when you really get down to the final analysis, he says to himself, "Where will I be better off?"

Q. In the first part of that answer, Mr. Boni, were you saying to me that because two corporations pay the same dividend and have approximately the same earnings, it does not follow that the market price will be the same?

A. No, but there would be a range. There is a limit to which yields will go; and, as I pointed out—to take an extreme example—I don't know of a case where a stock was selling for less than its yearly dividend. And I am now going to extremes now, of course.

Q. But within——

A. Within a reasonable range.

Q. You may have the same dividends, the same earnings, but a different price?

A. That is right.

I would also like to point something else out here, and that is in making this study, I tried to keep in mind the character of General Motors itself. I mean some of the things—some of the questions you are asking about, I might answer in an entirely different fashion if we were talking about penny stocks, purely speculative issues; but we are talking about a prime security here, and I am trying to give you my answers with respect to quality securities.

Q. Even among quality securities, you would have the [fol. 1256] same dividends and the same earnings, and a difference in price.

A. That is right, but I would expect that the range would be narrowed, if we got beyond the high quality securities.

Q. Through what mechanism do earnings and dividends affect stock prices? Is it again through the mechanism of changes in supply and demand?

A. No. In other words, you are asking me how do earnings and dividends affect supply and demand?

Q. I want to know the mechanism by which those factors are brought to play on prices of securities in the markets. Is it through the operation of supply and demand?

A. It is through the operation of supply and demand, yes.

Q. Is it a fact, Mr. Boni, that buyers of stock, sometimes common stocks, look not merely to earnings and dividends, either present or prospective, but also to the possibility of capital appreciation of one form or another?

A. That's correct, but that is merely now an example of the basic thesis, because as earnings rise you could expect to get not only earnings but capital gains as well.

Earnings, good improved earnings, lead to not only increased dividends but capital appreciation.

Q. Of course, if the buyers expected that the price of the stock would go down over some period of time in the future, they would not buy for capital appreciation, I take it?

A. Obviously not.

Q. You have told me that earnings and dividends operate on stock prices in turn through the operation of supply and demand. Does it not follow from that, Mr. Boni, that

anything that affects the demand for or the supply of a particular stock will affect its price?

A. In theory, yes.

Q. Well, in fact?

A. Yes.

[fol. 1257] Q. So that it would follow that an increase, say, in demand, that was not stimulated by a favorable appraisal of earnings and dividends past or present would affect the price of a particular stock?

A. That is correct.

Q. An increase in demand would tend to increase the price, would it not?

A. Not necessarily, because the very increase in demand and the rise of the price might bring supply into the market.

Q. Assuming that you have simply an increase—I am speaking now of an increase in demand.

A. Yes.

Q. Assuming that you have that, unless there is an exact correspondence in the increase in supply, in fact, the price would go up, wouldn't it?

A. That is right.

You are now speaking of the daily fluctuations, I would gather. But the way the market operates is that very often even though demand increases, you have supply available at that increased price, and the moment the price reaches a certain level, supply may come into the market; and there that supply is more closely related to the given price than it would be to the given earnings and dividends. In other words, you have bought General Motors, we will say, at 50; then General Motors goes down—this is one time—and you are a disappointed investor; and the next time General Motors will reach 50, you immediately count as a prospective seller there. And very often when there is a lot of stock bought at a given level, that becomes a supply area, and there are many so-called chartists who follow the charts on that very basis, that they call the number of shares sold on a given level.

Q. In this example, we are speaking of, until the price goes up to the point, Mr. Boni, where it will attract in-

[fol. 1258] creased demand, the effect of the increase——

A. (Interrupting) You mean in the supply?

Q. (Continuing)—increased supply—the effect of the increase on the demand side is to increase price? You are telling me, in other words,——

A. Well, provided it doesn't meet "supply on the way up."

Q. What I am asking you is there has to be an increase in price to attract the supply, is that right?

A. That is right. For a given day, for a given hour, you could take the mid-change in the price. That change signifies, depending on the time period that you are using—if you are using an hour, and in that hour the stock has gone up or down, it signifies what the demand-supply situation was for that hour; but that will change, not only hourly but continuously.

Q. Let us take the converse situation, Mr. Boni. Suppose that there is an increase in supply?

A. Yes. The converse will follow.

Q. The price will go down?

A. The price will go down, but it will bring—it very often brings demand.

Q. But to bring the demand, the price must go down, is that right?

A. Are you speaking of a particular security now?

Q. When selling at a particular price?

A. No. That would be only one of the factors that would bring demand in because on that particular day there may have been some news event, may have been a publication of earnings. There is one other factor we must consider that we are sort of omitting, which is extremely important in these situations, that is, what the market as a whole is doing.

Q. Let me take a specific stock and put to you a hypo- [fol. 1259] thetical question, and you answer as simply and plainly as you can.

Let us assume that there is a stock selling at 47, and that a block, a very large block, extraordinarily large block of that stock is offered for sale on the market.

A. Yes.

Q. Would you expect that the price would decline as a result of that offer?

A. You would have to be more specific, Mr. Cox. It depends on the block, the size of the block. Now, I had a lot of experience in so-called blockage problems.

Q. Yes, tell us about blockage, Mr. Boni. What does blockage mean?

A. Well, blockage means when you make a stock valuation, you must take into account the fact that when you are dealing with a large block, in other words, in an estate you find large blocks of stocks or stock, and one of the factors that you look into, is how big is it? Will the market be able to take it?

Q. That is the principle that recognizes that a large block of stock——

A. That is right.

Q. Let me finish the question, Mr. Boni.

That a large block of stock cannot usually be marketed within a reasonable time at the prevailing market price, isn't it?

A. That is correct.

Q. That is recognized in the estate tax regulations of the Internal Revenue service?

A. Recognized in estate tax regulations but in practice, in terms of the Tax Court decisions and in terms of the evidence that has been adduced, in terms of evidence that I have put together, it has been surprising what a small discount one obtains for large blocks of stock.

Q. It depends on how large the block is?

A. Obviously. There is no question about it.

Q. And within what period of time it has to be sold?

[fol. 1260] A. Well, there, I don't think there is a fixed rule. But it is pretty much of a rule, as I say—I don't know of anything fixed on the subject—but usually it has to be pretty close to the date of valuation.

I mean, you couldn't come in and say, well, this could be done in a year. It has got to be, it is sort of an unwritten rule, that it is a matter of days, rather than any long period of time.

Q. You have, of course, during this work you have spoken of in valuing blocks of stock for estate tax purposes had occasion, I assume, to examine the regulations of the Internal Revenue Service?

A. Yes, I have.

Q. Isn't it a fact that the test applied in those regulations is whether the estate can show that the block of stock to be valued is so large in relation to the actual sales on the existing market that it could not be liquidated in a reason-

able time without depressing the market? That is the test, isn't it?

A. That is one of the tests, that is correct.

Q. And if you can show that, then there is a discount allowed, is that right?

A. Yes, but there is even an offset to that, and that is——

Q. Just tell me if a discount is allowed? Is it?

A. If you can prove it.

Q. If you can prove it?

A. Yes, if you can prove it.

Q. That is a recognition of the fact that an increase in supply of stock, a large increase in supply, will decrease the present market price, isn't it, Mr. Boni?

A. It could be.

Q. Well, it is, isn't it?

A. Oh, it is a recognition of the fact, but it doesn't always—

[fol. 1261] Q. Of the principle?

A. It doesn't always follow.

Q. That is a question of fact, isn't it, in a particular case?

A. That is correct.

Q. All right. Suppose this Court, instead of ordering du Pont to sell 63 million shares of General Motors, would order du Pont to buy 63 million shares of General Motors in a 10-year period. Would you expect that to increase the price of General Motors?

A. I don't think I could answer that question without a study to determine what kind of supply would come out. It obviously would be a factor, certainly.

Q. Well, you concluded that you could sell 63 million shares without depressing the price?

A. Well, for the same reason. These two examples you have given me are somewhat different.

Q. All right, I will leave it there.

A. May I tell you why——

Q. That is all right. I will leave it there, Mr. Boni. As I understand it, it is your opinion that you could sell 63 million shares in ten years without depressing the price, but you couldn't buy or you can't tell us whether you could buy 63 million shares without raising the price?

A. I would like to point out, if I may, the difference between the two examples you cite.

Q. Very well, Mr. Boni, go ahead.

A. One of the reasons that I feel that you could sell 63 million shares in this period is the shortage of the supply of stocks. In other words, here you have a latent demand, institutional demand, all sort of pension fund demand, insurance company demands. There is a shortage. There is all sorts of evidence here——

Q. Is there a shortage of General Motors?

A. Yes, I would say that there is a shortage of General Motors.

[fol. 1262] Q. You mean by that, that anyone who wants to buy a share——

A. You would——

Q. Let me finish the question, Mr. Boni, and then you answer it.

You mean that if anyone wants to buy a share of General Motors at approximately 46, which was the price, I think, at the close of business on Tuesday, they cannot go into the market and buy it?

A. You might drive the price up. You might drive it up.

Q. Do you know of anyone who has tried to buy it at 46 and hasn't been able to, without driving the price up?

A. Oh, I don't know of anyone offhand, right now.

Q. Mr. Boni, do you think that the present market value of General Motors, the market price, reflects any scarcity value?

A. Yes, I think it does. I think the market as a whole does. I think one of the reasons for the tremendous rise we have had in security prices here in the past year was the scarcity, and I am sure that it applies to General Motors as well as it applies to the other stocks.

Q. Have you read any other testimony on that point in this hearing so far? Do you recall any other witness testifying on that point?

A. On that specific point, no, but I have read other testimony by Mr. Funston, for example, on the studies which point out very definitely—if I may, I have some of this testimony available. I would like to read it to you.

Q. You mean Mr. Funston's testimony?

A. Yes, Mr. Funston's testimony.

Q. I don't think we will stop for that now. Is that in the Fulbright hearing?

A. Yes, that is correct, it is in the Fulbright hearing.

[fol. 1263] Q. I understand that it is your opinion and

many of your exhibits were directed to establishing that there is no close correlation between volume of transactions and the market price of common stock?

A. That is correct.

Q. I take it you believe that stock prices may go down when volume is low, or they may go up when volume is low?

A. That is correct.

Q. And conversely, they may move in both directions when volume is high?

A. That is right, and there is, again, an illustration——

Q. Just a minute.

Mr. Metzger: If it please the Court, I have listened very patiently to Mr. Cox asking questions of the witness, and when the witness starts answering contrary to Mr. Cox's point, Mr. Cox interrupts the witness' answer.

I think the witness should be given the right to answer the question in his own way.

The Court: He should, if he is answering the question.

Mr. Metzger: If it is responsive.

Mr. Cox: Will you read the last question and answer, please?

(Record read.)

By Mr. Cox.

Q. Let me ask you another question, and if you wish to make an explanation, you may.

Do you conclude that because there is no correlation between volume of transactions and price movements that [fol. 1264] there is no significant correlation between changes in supply and demand and price movements?

A. No.

Q. Volume of transactions is not a term synonymous with either supply or demand, is it?

A. That is right. It——

Q. Is there anything else you want to say, Mr. Boni? Because that is all I was interested in.

A. Well, I think what I started to explain was one of the reasons that volume transactions is not correlated with price is that because of the existence of the strata of supply and demand that in the ordinary operation, in the ordinary

mechanism of price, as prices rise you would expect supply, or you would expect demand to decline. But in the market we have a peculiar operation of supply and demand where supply comes in by virtue of a rise in the price or where supply comes in as a consequence of a decline very frequently.

That is why you have this lack of relationship, so to speak. But, as you pointed out, underlying all of this, nevertheless, is the factor of supply and demand, but the factor of supply here is an elastic one and demand is elastic.

It isn't like you have a commodity for sale, like wheat, where the demand for wheat can be measured. The demand for stocks cannot be measured. It is an elastic supply and an elastic demand.

Q. It is always a question of how high the price has to go to attract additional supply, is that correct?

A. That is correct.

Q. And how low to attract additional demand?

A. That is correct, and that again is why yield comes into it because another thing that happens to it is when these stocks go up and their yield declines, that in itself brings a certain amount of supply into the market.

[fol. 1265] Q. And, of course, that is a question, this question of the elasticity of demand and supply, I suppose, ultimately is the question that has to be decided in terms of a particular stock, isn't it?

A. That is correct; that is correct.

Q. Because stock——

A. You cannot isolate them, Mr. Cox, because——

Q. I understand.

A. Other things you have to take into account, conditions that affect the market as a whole will affect the individual stocks. I mean, there are rare examples, of course, where they go contrary.

Q. But common stocks are not fungible really, are they? You explained to us a little while ago that you may have differences between stocks based on different appraisals made by investors even when the earnings and dividends are the same?

A. That is correct.

Q. So they are not fungible?

A. This is a very complicated problem.

Q. They are not fungible in the sense that one ton of coal is like every other ton of coal?

A. No, but they are interrelated, nevertheless, because one stock competes with the other. In other words, you have here competition by securities for the investor's dollar, and as General Motors moves up or down, it causes investors to evaluate their other holdings, and then you have the switching among securities.

Q. But their attention is always directed in the first instance to the particular condition of that stock in relation to other stocks?

A. Of that stock, that is right, and there are many operators in the market who have said to me, people who study individual stocks are wasting their time. They said, You tell me which way the market is going, and I know what [fol. 1266] stock to buy. I don't care about these earnings and dividends.

Q. Mr. Boni, let me direct your attention to two exhibits you introduced, Exhibits 320 and 329. Those are some line charts which show the movement of prices in relation to certain events which you have given the dates for on the face of the chart.

A. I have 320 before me.

Q. That is the one that has to do with General Motors, is that correct?

A. That is correct.

Q. And the other one has to do with du Pont?

A. That is correct.

Q. I should like to ask you some questions directed to the dates and lines on these charts that have to do with steps in this litigation.

A. Yes.

Q. Of course, you are aware, aren't you, Mr. Boni, that this Court has not yet entered any final order in this case?

A. Yes, I am aware.

Q. You are aware there has been no decision with respect to what steps will be taken with respect to General Motors—du Pont's holdings of General Motor stock?

A. Yes, I am certainly aware.

Q. Did you intend by that chart to convey the impression that nothing that this Court could do would in any sense affect the price of General Motors or du Pont?

A. Absolutely not. That was not the purpose of the chart at all.

Q. That was not the purpose?

A. No.

Q. Is it your opinion that this litigation has had no measurable effect so far upon the price of the stock of the du Pont Company?

A. Yes, it is my opinion.

Q. Did you read the testimony of Mr. Boulton on that point?

A. Yes, I did.

[fol. 1267] Q. You disagree with Mr. Boulton?

A. I disagree with him.

I would like to say or add one word there. When you say no effect, no measurable effect.

Q. I thought those were your words?

A. I am sorry. Well, measurable effect is my word, yes.

Q. I thought that is what I said.

A. I am sorry.

Q. You mean by that, I take it, that there may be an effect, but you can't measure it?

A. There may be an effect, but none that I can measure.

Q. Do you mean by that you can't put a percentage to it, or anything of that sort?

A. No, not only that, but it is so small and there are so many factors in the market that to point to any of these things as cause and effect would be something that I was not able to do. I was looking for clear cause and effect and practically, not only practically, but in all of these instances, there was never clear cause and effect here.

Q. Let me ask you one final question about those charts, and then you may put them away, Mr. Boni. In your opinion, has anything happened in the past twelve years in the history of either du Pont or General Motors that would be in any close sense comparable to a divestiture by du Pont of 63 million shares of General Motors?

A. No.

Q. Thank you. Mr. Boni, let me direct your attention to a passage in your testimony at page 1038 of the transcript. This was a passage in which Mr. Metzger was questioning you about overhang, and in the course of your answer you said this, that "With a large block of stock such as this to be liquidated, I think it would bring to mind of the poten-

tial investor or potential owner that here is a great big [fol. 1268] stake to somebody, that the disposers of this stock could not afford to see any serious breaks in this market, that either official stabilization of some type would probably go on, or unofficial, but, in any event, that this stock would have to be supported."

Do you recall that?

A. Yes, I do.

Q. Now, in reaching your conclusion, Mr. Boni, did you assume that some stabilization of this kind would be carried on?

A. Not that it would be but that it might be. As you recall, I tried to be very careful in my conclusions to state that this had to be done with appropriate safeguards, appropriate mechanics, it had to be done skillfully, and that obviously this would not be done by taking all of the shares and then announcing, "We are now going to dump all these securities on the market."

That certain safeguards—and among other things I conceived that a plan could be worked out where something like that would go on.

Q. Well, does your conclusion then depend upon the assumption that there will be stabilization of this kind?

A. Just in the overall pattern that some mechanism of that kind probably could be worked out or might be worked out in some degree.

Q. Now, I am not sure that we are getting an answer to the question. Let me put it to you this way. Mr. Boni, assume that there was no stabilization carried on, would your conclusion still stand?

A. Yes, my conclusion would still hold. As a matter of fact, I have not given any really serious thought as to these so-called safeguards. I know they are there.

I think it is something that would require careful study [fol. 1269] and careful consideration and at this moment, if you ask me, I could not give you an exact answer as to how it would be done.

On the other hand, if you look at the deflated volume chart of General Motors which shows these movements you find, for example, that prior to the events in 1955, that stock split, and so forth, that that chart supplies the evidence that that is exactly the way these things were done.

I am not being critical here. They should be done legally that way, can be done. We all know that the S.E.C. for example, permits stabilization operations, and so forth.

Q. Is that what you mean by official stabilization?

A. That is what I meant by official stabilization.

Q. What do you mean by unofficial stabilization?

A. Well, groups frequently are organized to buy stock and support a stock at a given price.

Q. You mean sort of like a buying pool?

A. I suppose so. I am not sure that your term describes it. Whether a buying pool is permissible under the present rules, I am not sure, but essentially that is what would be done and it could be sort of a conscious parallelism on the part of the present owners whereby various owners of General Motors would step into this market without eyer having seen each other.

Again, we have a peculiar psychology in the market. One thing that at least I have never been able to explain, and I do not think anybody else has been able to explain—what is it that causes activity in the market to generate all over the world all of a sudden?

Q. May we come back, Mr. Boni, to the question of stabilization for a moment? Do I understand that—well, strike that and let me put this question to you:

[fol. 1270] You speak in your statement here of the disposers of the stock engaging in stabilization. Do you mean the du Pont Company?

A. No, I mean the people who would be responsible for the distribution of the 20 million shares.

Q. You mean the trustee appointed by the Court?

A. The trustee, yes. I recognize that there are two separate problems here. You have the problem of the individual holder of du Pont, who would receive General Motors—and I believe Doctor Friend touched upon that, that there might be methods of even handling——

Q. Well, I am trying to find out now what person would do the stabilization. I take it you are referring to the trustee.

A. Well, there could be, as they have when these secondaries are issued, an announcement that there are going to be so many shares sold and stabilization would be going on for a certain period of time.

Remember that these things are done even when they are distributed on the Stock Exchange. It isn't a matter of cold-bloodedly offering shares of stock on the New York Stock Exchange. There is a big propaganda machine in back of all of this.

The customers' brokers get on the phone and, "Here is going to be an issue of General Motors" and——

Q. I am trying to find out, Mr. Boni, whether it is the trustee who will do the stabilization or someone else.

A. Well, I am speaking, frankly, off the cuff, Mr. Cox, on the subject. I think I explained it was not my assignment to develop a mechanism here. I have a notion, not only a notion but I am sure, given such an assignment, we could develop something that would be intelligent.

Q. Do you know exactly how stabilization operates? [fol. 1271] Isn't it the way that is done that the person stabilizing gives a bid, places a buy bid at a certain price?

A. Something like that.

Q. He pegs the price?

A. He pegs the price, that is right.

Q. Now, if you were going to stabilize for a period of time during the disposition of these 63 million shares, you would have to peg the price not only of the particular number, which might be a million or two million, three million—you would have to peg the price of the entire issue of General Motors?

A. Yes, but isn't it implicit in all of your questions here that this would be done as a sort of a one day operation? I think that that would be the worst way to do this.

Q. Well, I might agree with you.

A. You are suggesting it, and I am answering it, on the basis that as of Monday morning we would be——

Q. Well, all I am trying to see is whether you and I agree, Mr. Boni, that when you stabilize you peg a price, and for the period that you do that you have to buy all the stock that is offered at that price?

A. That is right, but at the same time I am wondering whether this is a realistic approach to the problem.

Q. Well, I think perhaps the whole subject might be left on that note. Let me turn to something else.

A number of charts that you put in had to do with the turnover ratio; do you remember those charts?

A. That is right.

Q. Now, am I right that turnover ratio is computed on the basis of transactions in stock?

A. That is right.

Q. Each transaction involving a buyer and a seller?

A. That is correct.

[fol. 1272] Q. So that each transaction means that at the particular price involved, there was someone who was willing to sell at that price and someone who was willing to buy at that price?

A. That is right.

Q. Now, if the turnover ratio of a particular stock goes down, does that mean that fewer people are willing to sell the stock?

A. No; it means that the speculative activity has been declining; that the interest has been declining for one thing, and the other thing, which I think is much more important, and of the greatest importance here, is that I think it reflects the immobilization of that particular stock.

In other words, the short term buyer and the short term seller has become a long term buyer and long term seller. He has converted himself from the speculator to the investor.

Q. But in every transaction, while it shows that there is —or let me put it this way to you, Mr. Boni. As the turnover ratio goes down, it means that, if you look at it from both sides of the transaction, that there were——

A. (Interrupting) There were fewer buyers and sellers.

Q. And there were fewer sellers, too?

A. That is correct; and that the activity is diminishing.

You must remember, in looking at any of these charts, the turnover chart or anything else, that I wouldn't care to make any conclusion on one concept here. This is a matter of looking at all of the facts, looking at everything imaginable that we can see to try to do that might be a factor here, and then sort of amalgamating and distillating all these factors into a conclusion.

Q. I take it from what you said to me, Mr. Boni, that [fol. 1273] in drawing inferences, whatever they may be, from the rise or fall in turnover ratio, you have to look at it in terms both of supply and demand?

A. Well, surely. Every transaction is a 2-way transaction, obviously.

Q. Now, you have some charts in the record, I think, Mr. Boni, that show the turnover ratio of General Motors in terms of a percentage to the market as a whole, is that correct?

A. Right.

Q. Did you study any material that compared the absolute number of shares that GM traded on any stock exchange with the absolute number of shares of other large corporations that are traded on the exchange in a year?

A. No, I did not, for this purpose.

Q. I had the impression, Mr. Boni, that among the documents submitted to us by the Government were some work sheets that had probably come from your study that showed a turnover, that ultimately showed a turnover——

A. No, I think——

Mr. Metzger: Just to straighten that point out, Mr. Cox, those work sheets came from our staff economist.

By Mr. Cox:

Q. So you don't have any information, Mr. Boni, as to how the absolute number of GM shares traded on the stock exchange compared?

A. No, I didn't go into that in that respect.

Q. Would you be surprised to learn in recent years, as compared with a number of other important large companies of the same size and character, that in absolute numbers, it is toward the top of the list in every year?

A. In absolute numbers?

[fol. 1274] Q. Number of shares.

A. No, I would be surprised if it were the other way, because——

Q. Every year, whatever the percentages may be—in every year there are a very large number of GM shares traded on the exchange.

A. You would expect that.

Q. Now, Doctor Boni, let me direct your attention to another subject, which is the question of odd lots.

You have a chart, which I believe is Government Exhibit 361, in which you set forth some figures with respect to odd lot sales.

Would you like to look at that?

A. Yes.

Q. Now those charts combine odd lot purchases and sales, do they not?

A. Yes, they are both sides of the transaction.

Q. They don't show, in other words, in any year how many persons—separately, how many persons sold odd lots, and how many persons purchased odd lots?

A. No, they do not.

Q. And to determine in a given year whether there were more persons who purchased odd lots than sold odd lots, or whether more stock was bought in odd lots than sold, you would have to get those figures and strike a balance, wouldn't you?

A. That is right, those figures are available. There are odd lot purchases and odd lot sales.

Q. Do you have any figures in your work papers?

A. Probably.

Q. Do you have them here, Mr. Boni?

(Document is handed to the witness.)

Mr. Tierney: Who is the gentleman who handed the witness the papers, for the record?

[fol. 1275] Mr. Metzger: The gentleman who handed him the papers is Mr. Bernstein, his assistant.

By Mr. Cox:

Q. Do those figures show the breakdown between odd lot purchases and sales for the years 1946 through 1957?

A. Yes, they do.

Q. Mr. Boni, I want to do this in the easiest way. I have had cause to have made a tabulation of these figures, and I will either let you look at that or ask you to see if you can tabulate them from the work sheets.

A. I have before me a tabulation of shares sold—customers' shares sold, customers' shares bought, and also what the broker did to equalize that position.

Q. Well, is this on General Motors?

A. This is on General Motors. I believe I have the same thing on du Pont.

Q. It is the General Motors that I am interested in.

A. Yes, I have it on General Motors.

Q. What is that? Is that on an adjusted basis?

A. No, I assume this broker——

These would represent the raw data. My assistant might know.

Q. Well, could you——

A. (Interrupting) I could check, I suppose.

Q. Could you tell me what—

Well, perhaps—let us start with a later year.

Can you tell me for the year 1956 what the net purchases or sales were?

A. Yes. The customers bought 904,000 and they sold 502,000; and the net would have been 400,000 bought, which in effect, ties in with what this broker reports that he bought.

In other words, to equalize——

[fol. 1276] Q. Those figures are not on an adjusted basis?

A. I wouldn't think so, but we can check if you desire.

Q. Can you tell me what the figures show for 1946?

A. I have 327,277 sold, and 437,797 bought.

Q. So you have a net figure for that year of what?

A. Well, the net figure isn't to the exact—it will not be the exact difference between these two, because the broker bought 114,900 shares; and, in t' se cases, they have an inventory on hand—they either take some from their inventory—I mean this is essentially a balancing operation.

Q. Well, can you tell me from that, do those figures, looking at the net purchases or net sales, show—and they are examined on that basis—do those figures show any consistent trend upwards or downwards on a net basis?

A. On a net basis?

On a net basis, even if we adjusted for the splits, I would say the trend is somewhat upward.

Q. Are you sure of that, Mr. Boni?

A. 1950-51 would probably be out of trend, but I think if you looked at this commencing with 1947, where we have 27,000, in other words, six times—

Incidentally, let me point out something else here that is on this sheet.

This shows that while the broker bought 27,000 shares, he also sold 22,000 shares in that year, so that on the balance, the broker bought only 5,000 shares; so we would have to look at the net of what the broker did to get that.

And, as I look at it, again, except for the unusual movement in 1950 and 1951, I would say that there is an upward trend.

Q. Wasn't there an unusual movement in 1946?

A. In 1946? Yes. I couldn't tell how unusual that is, without having data prior to 1946.

[fol. 1277] Q. Doesn't the figure for 1955 if you look at it on an adjusted basis, appear to be somewhat out of trend?

A. 1955 out of trend? Not with the years preceding it, no.

Q. Not with 1954?

A. It depends where you start.

Q. Look at 1952, 1953 and 1954.

A. 1952, '53 and '54? 1955 isn't really out of trend, no.

Q. Do you compute that there was a net balance on the purchase side in the year 1954 from those figures?

A. In 1954 there was a net sale.

Q. So there——

A. (Interrupting). Now wait a minute.

You have got to tell me what you are talking about—the customers or the broker.

In terms of the broker here, the broker sold more than he bought. In terms of the customers, they——

Q. When you put them together, what do you get—purchases or net sales?

A. In 1954?

Q. Yes.

A. Let's see—353 versus 352—it is almost a standoff.

Wait a minute, excuse me. They are reversed on this tabulation.

We have sold and bought and bought and sold, and I have been adding the wrong way.

In terms of "bought," we have.

Q. In fact, then is your balance——

A. Your balance is on the sales side.

Q. On the sales side?

A. That is right.

Mr. Cox: I think perhaps these work papers should be marked for identification.

Mr. Metzger: We have no objection.

[fol. 1278] By Mr. Cox:

Q. Does this have all the figures that you were testifying about?

A. Yes, this has all the figures.

You understand there were two brokers involved at that time. This represents only the one.

Q. Could we have the other broker, too?

A. Yes. This is Carlisle & Jacquelin; the other broker is De Coppett & Doremus.

This other broker, incidentally, did make the adjustments for splits, apparently.

I don't know what it shows, offhand.

Q. I don't want, in fairness to you, Mr. Boni—if you answered my questions about the trend by looking at only one of these reports, perhaps the record could show that.

Or did you look at both of them when you answered?

A. When I answered your question?

Q. Yes.

A. No, I did not; I looked at the top sheet.

Q. Now one of these sheets is headed, "Carlisle & Jacquelin, August 11, 1955, General Motors Corporation, Odd Lot Volume—Round Lot Volume."

Mr. Cox: That, I ask to have marked as a du Pont exhibit.

(Thereupon said document was marked du Pont Exhibit 4 for identification.)

By The Witness:

A. If you want the record complete, here is one for du Pont.

By Mr. Cox:

Q. I haven't asked you any questions about that, Mr. Boni. I am not sure that makes too much difference.

[fol. 1279] Mr. Metzger: Mr. Cox, to make the record clear on those documents, both of those documents are unadjusted for stock splits, so that in the years 1950 and 1955, you will have a mixture of $10 par and $5 par in 1950 and in 1955 you will have a mixture of $5 par and the 1-2/3——

Mr. Cox: I understand that. I would assume that by adapting or using these statistical methods that Mr. Boni described to us yesterday, we could digest these merely by arithmetic.

The Witness: The conclusions might change. In other words, what I read to you was what that particular sheet showed.

Mr. Cox: The second one is to be marked for identification as defendant du Pont Exhibit 5, and is headed, "General Motors Corporation, De Coppett & Doremus, Share Volume." It shows the year, New York Stock Exchange, Volume, hundreds bought, sold, public sales, odd lots bought, sold, public purchases, total shares.

(Thereupon said document was marked du Pont Exhibit 5 for identification.)

The Court: The Court stands recessed for ten minutes.
The Court: Proceed, Counsel.

By Mr. Cox:

Q. Mr Boni, I should now like to direct your attention to a passage at page 1220 of the printed transcript, in which you state your ultimate opinion in these words:

> "I think I stated yesterday morning that I came to [fol. 1280] the conclusion, based upon all of this evidence which we accumulated, and careful weighing of it, that in my best judgment the divestiture could be accomplished without any dire consequences to either du Pont, to the value of du Pont securities or to General Motors securities."

Then you were asked by Mr. Metzger:

> "What do you mean by 'dire', Mr. Boni?", and you answered:
>
> "Well, I think that properly executed, circumscribed by several safeguards which I have considered, this could be done over the long run. I am not talking about any day-to-day movements in prices now, but other than for possible short-term problems, there would be no measurable decline in the value of the securities."

Do you recall that?
A. Yes, I do.
Q. Now you were, in reaching this opinion, considering the sale of 63 million shares of General Motors?
A. That is correct.

Q. Does this statement of your conclusion mean that in your opinion that if 63 million shares of General Motors are sold over a ten-year period that there will not be at any time during that period a measurable decline in the market price of General Motors stock as a result of those sales?

A. Well, I take it that your question has a very precise meaning, and I think I answered that by saying that day-to-day short-term, there could be.

I mean, this isn't something that could happen without any measurable—without any effect, and I thought I tried to make it plain that what I was talking about here is that done properly, done carefully, done intelligently, that at the end of the ten-year period, I don't think anybody could [fol. 1281] measure how the stock had been affected upward or downward.

Q. Yes. What I am trying to find out, Mr. Boni, is whether it is your opinion that during the ten-year period, while the sales are going on, that there will have been or there will be no measurable depressing effect on the price of General Motors stock?

A. Even the United States Treasury, Mr. Cox, has had trouble with some issues from time to time, so that for me to say there would be no trouble over the ten-year period would be sort of really stretching a point here.

Q. Are you telling me, Mr. Boni, that during the ten-year period, there will be measurable depressing effects?

A. During the ten-year period I can conceive—that is why I think there must be a certain amount of flexibility here, where the Trustees and so forth might decide we had better withdraw what we are doing, or we had better stop for a period.

That is where the careful judgment and discretion will be required and the flexibility required. This cannot be done—let me just cite an example that I certainly never dealt in any 63 million share blocks, but I have had occasion to sell 5,000 shares, 10,000 shares, where the instruction to the broker was "Use your discretion" or give him a price.

I mean, one of the things that you learn in a market operation is that you have got to know how to give instructions. You have got to have a feel of your market. It isn't just a matter of taking 63 million shares and saying, "We are going to sell so many shares a year." This is——

[fol. 1282] Q. Mr. Boni, you started out to answer by using the words "I conceive." Now, the question I asked you is a simple question, and I must ask you to try to answer it in simple terms, if you can.

The question is whether, in your opinion, during the 10-year period in which this sale of 63 million shares is being carried on, those sales will in any measurable way depress the market price of General Motors.

A. I don't think I can give you a yes or no, I would have to qualify my answer there.

Q. You can't answer the question?

A. I could answer the question with a qualification, yes. I would say that the answer is, it could be done without anything serious.

Q. What do you mean by anything serious?

A. Well, I can conceive that at some point there might be a point drop, a half a point drop, quarter of a point drop.

Q. Then, is it your opinion that this can be done with your safeguards in the 10-year period, the sale of 63 million shares, so that at no time during that period will the sales cause a drop of more than a point?

Just tell me what your opinion is, Mr. Boni. That is all I am trying to find out. You don't have to argue with me about it. I will let it stay.

A. Well, I am afraid your question is a little too precise. You say——

Q. I have no doubt.

A. (Continuing) If I may finish. To begin with, it all depends on where General Motors would be. For example, if General Motors—I am going to state an extreme to make a point here—if General Motors moves up to $150 a share in the next ten years, obviously we are no longer dealing in points. We are dealing—we would expect more.

[fol. 1283] By the same token, if, because of general economic conditions, General Motors were to decline substantially and the price got lower, No. 1, that would probably not be a time in which to sell the stock; but, No. 2, if there were reasons to sell, intermediate rallies, and so on, that point might be very big. I don't know. This thing cannot be answered precisely.

Q. Can you answer it at all, Mr. Boni? Can you tell me whether, in your opinion, in the 10-year period the sale of 63 million shares of General Motors will not depress

the market price of General Motors at anytime in that period more than a point or two?

Is that your opinion? Tell me. If it isn't your opinion, tell me that.

A. Within a point or two, I would answer yes. In other words——

Q. That it can be done?

A. That it could be done, yes.

Q. Within the 10-year period, 63 million shares could be sold without depressing the price more than a point or two?

A. Over what period?

Q. At any time in the 10-year period.

A. You mean within one day? Would you take a day and use that?

Q. You tell me. You answer the question in your own period of time.

A. I would say as we have done here, in other words, using monthly data, which we chose after careful consideration as to what type of period, that within a month, the stock would right itself.

Q. Do you mean that if it went down——

A. If it went down a couple of points, depending on how near your month end figure was to the point where it had been done, but given a month's time, the stock would right itself.

[fol. 1284] Q. I understand that it is your opinion that the 63 million shares can be sold in the ten-year period?

A. That is correct.

Q. And that the most depressing effect it would ever have at any time would be one point or two, and that would not last more than 30 days?

A. Unless the stock rose, where one or two points would have to be changed to reflect—after all, these are percentage movements.

Q. Suppose the stock goes down, would one or two points have to be changed then?

A. One or two points, as it went down, that would become less. As it went up, it would become more.

Q. You mean, as the market gets soft for General Motors it would be easier to sell 63 million shares at market price?

A. That isn't what I said. You asked me what the range

of decline would be. I didn't say easier. It would be very much harder to sell in a down market.

In fact, I think that is part of the judgment that should be applied.

Q. Could it be sold in a down market at a discount of no less than one point or two points?

A. Well, then, I don't want to be quarreling with you, but you cannot generalize.

When you say a down market, I don't know what you mean. It could be a climax. It could be in a climax of the market, after a decline, where you have tremendous volume coming in, you could dispose of a lot of stock right after the decline. During the decline you would hurt the market, but very frequently these movements—I hate to go back so far, but my experience in these things was much richer then than now.

[fol. 1285] I distinctly remember the decline in October, 1937, October and November of 1937. That ended with a terrific climax, and you could have disposed of all kinds of shares in that kind of a climax.

I think there was another climax in March, 1938. We have these climactic periods in the market——

Q. Mr. Boni, your reminiscences are interesting, but I should like to put this question to you again, and see if we can get an answer, and then we will leave it. I want to be sure I understand you, and all I want is a clear expression of your opinion.

It is your opinion, I take it, that 63 million shares of General Motors can be sold in a ten-year period without at any time depressing the market price of General Motors by more than a point or two, and that in the event that such a depression takes place, to wit, a depression of one point or two, it will never last more than 30 days. Is that your opinion, Mr. Boni?

A. Let's change this——

Q. Can you answer the question?

A. Yes, I can, but I would like to make a suggestion; that instead of dealing with points, which is very difficult in terms of——

Q. Well, you were the one who mentioned the points.

A. Well, in trying to give you an answer, perhaps I can use a better standard, or at least a better standard from my point of view.

Q. All right.

A. And that would be to perhaps talk in terms of percentages. What I am talking about—we are talking about something in the range of 5 per cent, and if you were to say to me this could be done within a 5 per cent short-term, not over any long period, that you might have 5 per cent declines from time to time as the group entrusted with this [fol. 1286] liquidation judgment did not work out each time—I would not expect it to work out——

Q. You might have a 5 per cent decline in one year, and a recovery, and then a 5 per cent decline in the next year, and a recovery, and so on?

A. That is correct, or within one month. In other words, you might have a decline of 5 percent; they would have to wait until there was a recovery, and again—one of the safeguards which I did think through rather carefully in view of my analysis was this safeguard of developing what the traditional yield was for General Motors and giving specific instructions to the Trustees that when that yield exceeded the historical yield, that at that time sales would be curtailed or stopped.

In other words, permitting this market to recover, permitting that kind of demand to come in, the demand that exists where insurance companies, trust funds, all types of investors, college funds, are just sitting and waiting where they know that they would like to have General Motors in their portfolio—"Yes, but we will buy it when it reaches this level."

Q. I take it from that answer that what you are now telling me is that in your opinion the sale of 63 million shares could be accomplished in a 10-year period with short run price effects perhaps in the neighborhood of five per cent, but no more, is that correct?

A. Yes, that is a reasonable interpretation of what I said, within that range.

Q. The fall of 63 million shares would mean over that period an increase in the supply of the stock of General Motors on the market in relation to the outstanding stock of about 23 per cent, wouldn't it, Mr. Boni?

[fol. 1287] A. Yes, it would, but, again, you are questioning me in the vacuum essentially. It is true that I did not make a study of what proportion of the 63 million shares

would be sold; but I certainly have it in the back of my mind because, again, this was an assumption based—

It is true that I tried to assemble all the facts, but judgment, I think, had to enter into it, and I certainly recognize that when you push on a 63 million—I think that you are making it implicit in that assumption that something is very, very unrealistic.

Q. But that is the assumption on which you made your study?

A. Yes, which was based on the very worst, in other words, what would happen if the whole 63 million shares had to be sold.

Q. I am trying to find out now what your opinions are, that is all, and I understand now what they are as to the five per cent decline.

In your judgment, would that market impact be less if the distribution of the 63 million shares occurred over a 20-year period, or longer period than ten years?

A. I think that in my—well, I do not think, let me put it this way: In my written report I said that it should be ten or possibly twenty. Before making anything really final on that score, I would want to study that particular phase very carefully. I am not sure.

Q. You have stated in your conclusions—strike that.

Let me ask you another thing. You mentioned a moment ago or made a reference a moment ago to the historic yield on General Motors stock. Does that serve as some kind of a guide in connection with these dispositions?

A. Yes; by historic yield, I possibly did not express that fully. Not only the historical yield of General Motors but [fol. 1288] the historical yield of General Motors in relation to the market. In other words——

Q. That is the spread, so-called, that is shown on Exhibit 324?

A. Yes. Reading that exhibit you have in mind, I take it, that the figures from '46 through '51 are going to be slightly changed.

Q. I understand not in a significant way.

A. Not in a significant way but I wanted to be sure we did not——

Q. Well, did I understand from your remark that it was your view that these sales would in your best judgment not reduce the price of General Motors even on a short-

term basis to any point which did not fall within the range of yields shown on this chart?

A. I am sorry?

Mr. Cox: Read the question, please.

(Question read.)

By the Witness:

A. No; if I understand your question correctly, I said that on a short term basis there might be as much as a five per cent decline, but what I did say was that I regarded one of the safeguards that should be taken is not to put more stock on the market when it exceeded the spread shown by this type of an analysis.

Now, I am not suggesting that this is the proper period for that analysis. I would want to consider whether a more current period should be used rather than a twelve-year period here.

I do not know what the more recent spreads would be, but this particular analysis does not represent my recommendations as to how that particular safeguard—I am [fol. 1289] merely indicating that this is the type of a method that should be employed in developing a safeguard.

Mr. Cox:

Q. What I am trying to find out, Doctor Boni, is whether it is your opinion that the sale of the 63 million shares could be made at prices which would produce a yield somewhere within the range shown on this chart.

A. I gather now you are not referring to the spread, you are referring to——

Q. To the up and down points.

A. To the up and down. No, I do not think you could use that for this purpose because in order to answer that question you would have to make an assumption with regard to the market.

Q. Well, if you have to make an assumption for this purpose in regard to the market, how do you use this spread chart as a safeguard?

A. Well, this is to show the historical relationship of General Motors to the market yield. Now, if you ran into a period where the market yield was high, I would expect

General Motors' yield to be higher. Where you ran into a period where market yield was low, I would expect that the yield on General Motors would be correspondingly lower.

In other words, what I am saying is that there is a long term traditional relationship. Incidentally, the word tradition is well chosen here in the sense that that is one of the things the security analyst does.

Q. I understand.

A. He tries to see what this traditional yield is, whether a stock is cheap or not.

Q. Would you explain to me again exactly what this safeguard is that you have in mind in relation to your Chart 324?

A. Sir?

Q. Is it your point that the sales can be made within [fol. 1290] the ranges shown on the chart?

A. No, that isn't my point.

Q. That is not your point?

A. That is not my point.

Q. All right.

A. I have two separate points here. One, you asked me what I thought the maximum decline, short term decline would be, and I tried to answer that.

Now, this, if you want to characterize it, this so-called spread chart would be the basis for determining the limitations to be imposed upon the trustee where the trustee would be told, "Look, traditionally General Motors does not exceed—its yield does not exceed X-per cent."

Now, when that traditional spread is exceeded, no stock is to be offered.

Q. That would mean if the price of GM goes up to produce—goes up beyond a certain point, no sales would be made, and when it goes down——

A. No, no; that would be only on the one side, obviously.

Q. Only on which side?

A. Only on the down side.

Q. When General Motors reached a certain low point, no sales would be made?

A. That is correct, when the spread on the down side—obviously a spread on the upside would be a signal to increase the sales.

Q. By the way, this chart of yours, yield chart, which is Exhibit 324,—for the purpose of computing that chart, you

excluded the extra dividends of General Motors, didn't you?

A. That is correct.

Q. But you did not exclude them from the composite of 500 stocks?

A. No, and I tried to——

Q. I think you said——

A. I tried to explain that in detail.

[fol. 1291] Q. I think you said in composite the absence and presence of extras tend to cancel one another out?

A. Yes, and when you are dealing——

Q. In your opinion is that a sound reason for comparing the yield based on excluding extras with a composite yield that includes extras?

A. It depends upon the purpose of the study.

Q. Well, was it proper for this purpose?

A. I think it was.

Q. I think you rationalized that yesterday by saying that a prudent investor in deciding whether to buy General Motors would not take the extra dividend into account, or might for the purpose of computing yields?

A. Depending upon the kind of investor, not that he would not take it into account, but that he would not buy them with the intent—would not buy them with the intent of receiving that kind of yield in the future.

Q. Well, would the investors who buy the stock in the composite act with the same intent?

A. The investors don't buy the composite.

Q. They buy the stocks in the composite, don't they?

A. Yes, but when——

Q. Do they buy those stocks with the same intent?

A. Well——

Q. Answer the question, Mr. Boni.

A. May I finish my answer there, please?

Mr. Metzger: I object.

Mr. Cox: I have asked him whether the investors who buy the stocks in the composite buy with the same intent that the investors in General Motors buy.

[fol. 1292] A. They don't buy the composite.

Q. I did not ask you that. I said the stocks in the composite. Now, answer the question.

I suggest to you, Mr. Boni, this——

A. Yes.

Q. (Continuing)—that this a phony chart, that you computed the yield for General Motors on the assumption that investors bought General Motors with one kind of an intent and that they bought the stocks in the composite with a different kind of intent.

A. I think that calls for a careful answer.

Q. It calls for an answer.

A. Let me start this way. In the first place, this composite is a statistical series that is prepared by any number of the services. It is published by Standard & Poor's. There is a similar composite prepared by Barron's.

It is an accepted index used by analysts and investors to measure the relative behavior of securities.

Now, when we made the analysis here we found that General Motors by and large over the period examined followed that composite. We anticipated that it would do so.

All the rationale, all the economic significance of that is quite apparent, and one of the things that we attempted to find out here was to explain, "Why is it that in this period when General Motors was doing so well, when General Motors was paying extra dividends, that a tremendous amount of buying did not come in to bring its yield into line with its past, with its present, with its long term?"

We, in doing that, found that if you take those extras out, as representing unusual circumstances, in the same way that when you look at earnings and you find unusual expenditures or unusual income they are eliminated—that [fol. 1293] to get a true picture of the long term relationship of General Motors to the market as a whole it was necessary to make that adjustment.

It is in relation to the composite that we must look at General Motors. Now, when you ask me what does the investor buy when he buys the stocks in that composite, well, he does not buy the composite, he buys the stock in that composite. Then we would have to analyze each stock separately.

Q. Have you finished your explanation? Take all the time you want, Mr. Boni. Is that all?

A. Go ahead.

Q. Mr. Boni, I take it that you believe that there is a latent demand for the common stock of General Motors which would be brought into the market by this offering of 63 million shares?

A. The latent demand would come in as the pressure on the stock would bring the yields out of line with their traditional yields, and would be one of the prospective elements to this whole operation.

That if this stock went down and the yields were high on a regular basis—not on an extra basis, but in terms—assuming now that the yields—that the dividends paid by General Motors, and based upon their normal—the regular dividend—if those yields got out of line with the long-term and the stockholder relationship, that would bring a demand.

Q. A few more questions, Mr. Boni, and I shall finish.

In your conclusion, you also expressed the view that the divestiture of the 63 million shares would have no consequences so far as the value of the common stock of the du Pont Company is concerned that would be measurable in terms of its market value?

A. That is correct.

[fol. 1294] Q. Now all I want to ask you here, Mr. Boni, is just whether in reaching that conclusion you considered certain things; and we can dispose of that promptly and I shall have finished.

When you reached that conclusion, did you consider at all the tax problems that would be faced by a du Pont stockholder by reason of the approval of the Government proposal, if it should be approved?

I am not speaking now, Mr. Boni, about sales of General Motors, necessarily, but about any tax problems that——

Let me put it this way. I am not asking you whether you considered whether they would sell the stock, but just whether you considered the tax problems that a du Pont shareholder faced by reason of the distribution of stock?

A. No. I started with the worst assumption that everybody would sell.

Q. You didn't find it necessary to consider this?

A. I certainly did.

Q. I am sorry——

A. I certainly would like to have.

Q. But you didn't find it necessary to, on your assumption?

A. On my assumption, I did not; but I would have liked to.

Q. Did you at all consider—I am just asking you whether you considered it, Mr. Boni—whether individual investors would be deterred from buying du Pont (while this divestiture was going on, or whether the fact that the divestiture was going on would have any effect upon the price that they would be willing to pay for du Pont?

A. Yes.

Q. You did consider that?

A. I did consider that.

[fol. 1295] Q. Is your consideration of that subject evidence——

Let me put it this way. Is the consideration you gave to that subject reflected in the exhibits?

A. No, it is not.

Q. What consideration did you give to that matter?

A. Whether or not I considered—whether or not the assumptions I had made represented the worst possible assumptions.

Q. In other words, that all the stock would be sold?

A. That all the stock would have to be sold, that is correct.

Q. That was the assumption, was it?

A. That is right, and I would have liked to have considered all of it.

Q. Did you consider at all, in reaching your conclusion whether the adoption of the Government's proposed degree might for any reason lead any present holders of du Pont stock to sell their du Pont stock?

A. I am sorry, I missed the beginning of the question.

Mr. Cox: Read the question, please.

(Question read.)

By the Witness:

A. Yes, because one of the reasons I made that study in the exhibit, where I selected the dates, was to examine—and one of the reasons I wanted to look at the dates of the litigation, I would expect that the market would have attempted to anticipate—and the interesting thing is, when we have two dates, one time, when the Supreme Court changed the decision, and, in other words, when the decision became favorable and unfavorable and yet there was

nothing measurable in terms of the behavior of the stock, I would have expected that when the decision was unfavorable that there would have been some evidence appearing at that time.

[fol. 1296] Q. That was the extent of your consideration of that point?

A. Well, in terms of numbers—as this study was worked on, we obviously discussed it, thought about it intensely; and I can't tell you to what extent, but when I say, "extent", I want to make clear that we try to add judgment to these numbers, recognizing the fallacy of numbers.

Q. Did you consider anything else except the movement of stock price in relation to the question of whether present holdings might sell?

In other words, the factors where you considered, substantially——

A. (Interrupting) I tried to consider every factor, Mr. Cox.

Q. Are the factors you considered on this point adequately, in your judgment, set forth in that chart? Does that chart contain the basic material?

I am speaking of the chart that shows the dates of the Supreme Court decision and the price unit.

A. Well, it is adequate for this reason. That other than the dates themselves, it provides this 12-year record of the behavior of General Motors, so that you have more than just—I put them on the chart to sort of, let us say, pinpoint those particular dates; but, actually, the movements of the deflated price over the 12-year period were carefully considered.

Q. Did you consider any special problems that holders of du Pont stock might face by reason of the adoption of the Government's plan if the holders happened to be trustees for others?

A. In a general sort of way I considered it.

There are problems there. One answer that there is, is [fol. 1297] that actually what is going to happen here, assuming that this takes place, is that these trustees instead of owning one piece of paper, are going to own two pieces of paper representing the same thing. And there is a tax problem. And there is evidence in the past when they got two pieces of paper for the one, that two were worth more than the one.

Q. That was the way you looked at that particular problem, was it, Mr. Boni?

A. Well, it was one of the ways, as I am trying to explain.

Q. Was there another way?

A. Well, you are asking me now to reconstitute my thinking over a period of months, where I couldn't tell you whether we devoted an hour or five minutes or ten minutes. We tried our best to come out to a considered judgment.

Now when you speak of a phony chart, I would like to make the statement very categorically that I went into this —I went into this study, expecting to come out with an opinion that I could defend; and if I had come out to a contrary opinion, I would have so advised the Government very promptly. And it was my understanding that when I took this, and in fact, as I remember my instructions from the Government, they said to me, "Mr. Boni, if you don't think this is feasible, we want you to tell us so, and we would like the benefit of your thinking as to what other plan might be feasible."

So that I didn't load any dice here, and there are no charts here that are phony, that endeavor to establish a point of view.

Q. Can we go back to the question that I asked before, Mr. Boni, if you don't mind?

I was trying to find out whether you had given us a [fol. 1298] complete account of the factors you took into consideration in considering problems that might be faced by a trustee who held du Pont stock.

Have you told us everything you have considered on that point? Just tell me yes or no.

A. It was not a detailed consideration.

Q. Have you told us everything you can remember about it?

A. I have told you in a general way, yes.

Q. Everything that you can remember?

A. Everything that I can remember. If I took time out, I probably could come back with more; but, essentially, I have told you the high spots of it. Let us put it that way.

Q. Do you have any idea, Mr. Boni,—in this last question—if you sold 63 million shares of General Motors in a ten-year period, assume you sold it more or less at regular intervals, depending upon the condition of the market and

sold it, as you have assumed, on the New York Stock Exchange, can you tell me what relation those sales would bear to the volume of trading of General Motors on the Stock Exchange last year?

A. I can't give you the number, offhand; but I could consider it.

If you consider—that was one of the reasons——

Q. Mr. Boni, now, please—Mr. Metzger will take you on re-examination. Just try and answer the question; then you and I can part company.

A. All right.

Q. I suggest to you that in 1957, if you take the odd-lots and round-lots together, that the shares traded in a year of General Motors on the New York Stock Exchange was about 9 million shares. Does that refresh your recollection?

A. I think that is about right.

Q. Now, if you sold 63 million shares over a ten-year period, and just assuming that you sold 6 million shares [fol. 1299] each year, 6 million as compared with 9 million shares sold last year, would give you some indication of the increase in supply, wouldn't it?

A. Yes.

Mr. Cox: That is all.

Cross-examination.

By Mr. Bushby:

Q. Mr. Boni, you know that about 20 million of these 63 million shares are owned by my clients, Christiana and Delaware, do you not?

A. Yes.

Q. And it is a proposal here by the Government that a Trustee be appointed to sell those shares?

A. Yes.

Q. You say that the trustee should be given certain instructions about these sales, is that correct?

A. Yes.

Q. Who is going to give him the instructions—are you?

A. No.

Q. Mr. Metzger?

A. No.

Q. The Court?

A. Perhaps.

Q. The Court is going to lay out a program?

A. Well, I think the Court, with the aid of appropriate advisors might.

You are now asking me about mechanics which I, frankly, don't understand.

I would gather that this is a legal problem.

Q. It seems to me a very practical one.

A. You are asking me something that certainly I assume is the authority of the trustees—the trustees might be empowered to hire such consultants or advisors as they saw fit, or as they saw desirable.

Q. But you are the Government expert now that tells [fol. 1300] us how these 63 million shares get sold without any effect on the market.

A. Yes.

Q. And you have certain safeguards and skills in mind. Now, would you tell us what those safeguards are?

A. I mentioned one, I mentioned Two.

Q. What are they?

A. Well, I talked about stabilization of some sort.

Q. Wait a minute. What kind of stabilization? It has to be legal stabilization, doesn't it?

A. Yes, it has to be legal stabilization.

Q. Do you know what legal stabilization is?

A. In a general way.

Q. What is it?

A. You obtain permission from the SEC to do certain things, and I think you are required to state how many shares, and so forth.

Q. What does this trustee do that is appointed? What is the first thing he does?

A. Well, if you want to know from me what that procedure would be, I would say the first thing the trustee should be empowered to surround himself with appropriate technical skills and advisors.

Q. Well, does the trustee register the shares with the SEC?

A. I am not sure about the legality. I am no expert on that subject, Mr. Bushby.

Q. Well, take it from me that the trustee must register these shares.

A. All right, so he will register them.

Q. Then what does the trustee do?

A. The trustee then, under whatever latitudes have been given him, will proceed to either sell some of this stock through the secondary market—through the primary market——

Q. What do you mean by the primary market?

A. Through the registered exchanges, the New York Stock Exchange.

[fol. 1301] Q. Do you mean to say that the trustee registers the shares and sends a broker on the floor of a registered exchange like the New York Stock Exchange with a prospectus in his hand and——

Mr. Metzger: I object to this line of questioning to a witness who is a financial expert, your Honor. It is basically a legal question.

The Court: Overruled.

Mr. Bushby: Read the question, please.

(Question read)

By Mr. Bushby:

Q. (Continuing) And offers stock for sale?

A. I don't think that is the way it is done, Mr. Bushby.

Q. You tell me how it is done.

A. The trustee would then first decide how many shares he wanted to sell at a given time. He would then have brokers available to him. He would then place an order with those brokers, in turn giving them his instructions as to how he wanted that stock sold; what period of time, and at what price. Perhaps give him discretion.

It would be no different selling a million shares than selling a hundred thousand shares. If I went to sell a hundred thousand shares, I would decide how I wanted to parcel that out. I would parcel that out, obviously, in small blocks, although again, depending on the size of the stock, but let us assume I have a hundred thousand shares of XYZ Corporation to sell. I would have brokers available to me, and that would again be a judgment decision whether to use five brokers, ten brokers, twenty brokers. I don't know at this particular time. It would have to be thought through.

[fol. 1302] Then the broker would be given an instruction:

Here is 10,000 shares of General Motors for you to sell. We will give you limits, or we will give you discretion,——

Q. Just continue as long as you want, Mr. Boni.

A. (Continuing) Or we want stop orders put in. You are now talking about mechanical details.

Q. What do you mean by a stop order when selling stock?

A. A stop loss order.

Q. What is that?

A. What is a stop loss order? I am sorry, I withdraw the stop loss order.

Q. Doesn't the prospectus as part of the registration statement have to state the price at which the stock is to be sold?

Mr. Metzger: If it please the Court——

Mr. Bushby: He is familiar with this.

Mr. Metzger: Mr. Bushby is talking about a registration statement for selling stock on the New York Stock Exchange, and I don't see the appropriateness of a statement of such a sale.

The Court: Overruled.

The Witness: I am sorry. What was the question?

Mr. Bushby: Read the question.

(Question read.)

By the Witness:

A. I think it generally does.

By Mr. Bushby:

Q. So that once having filed a registration statement and it having become effective, what leeway does the trustee have to send brokers around selling the stock at [fol. 1303] various prices? Any?

A. That in itself would provide a floor.

Q. What do you mean by a floor?

A. Well, if he had to sell it at a certain price and he couldn't obtain it, he would withdraw that stock.

Q. Then what would he do?

A. Wait for a more opportune time.

Q. Do you think that you can sell a registered issue on the floor of the New York Stock Exchange by way of

regular trading? Yes or no, please. You are a financial expert.

A. On the floor—let me get that question again.

Mr. Bushby: Read the question, please.

(Question read.)

By the Witness:

A. Well, it is customary where you have a registered issue, as they did in the Ford stock, to sell it first on the secondary, first on the secondary market, and then place it on the New York Stock Exchange.

Q. And then what?

A. Place it on the New York Stock Exchange.

Q. Who placed it?

A. Who placed it?

Q. What do you mean by place? You mean they sold it?

A. No. They register it, and then on a certain date, at an effective date it was then traded on the New York Stock Exchange.

Q. It was listed?

A. It was listed, yes.

Q. Do you mean to say underwriters sold any of that stock on the New York Stock Exchange?

A. I don't suppose the underwriters did, no.

Q. Yet your testimony here is based on the sale of these [fol. 1304] shares on the New York Stock Exchange, isn't it?

A. Yes, because we were talking—I was asked to determine the effect of 63 million shares. What I said was that the 63 million shares could be sold on the New York Stock Exchange.

I did not differentiate between 20 million shares and the 43 million. In other words, I was asked how big is this market, and of the 43 million shares that are distributed to the du Pont shareholders, they might very well reach the New York Stock Exchange. Now the problem with the 20 million shares that you are talking about, those are probably separate problems.

Q. Did you take that problem into consideration?

A. Specifically, no.

Q. Do you think all the other 43 million shares can be sold without registration?

A. As a recipient of General Motors stock as a dividend from du Pont, I assume that I would be able to sell that stock without registration.

Q. I am not asking about you. I am asking about all the 43 million shares. Can they be sold without registration?

A. I don't know.

Q. Don't you know that any stock that is owned by somebody who is considered to be in common control with the issuer must register his stock, the officers and directors?

Mr. Metzger: I object. Once again Counsel is asking legal questions of the witness who has not directed himself to legal problems.

The Court: Overruled.

By Mr. Bushby:

Q. Do you know or don't you?

A. I don't pretend to be an expert.

[fol. 1305] Q. You didn't take that into consideration in your report then?

A. No, I did not.

Q. Now, the Trustee has got to sell these 20 million shares. He can't sell it on the floor of the New York Stock Exchange. Is he going to underwriters? Do you recommend that he go to underwriters, Mr. Boni?

A. I don't know. I have not studied—my study was not directed to that phase. My study was directed to determine whether the primary markets, where this stock would eventually go, could absorb a given number of shares.

Q. Yes, but don't you see the 20 million shares cannot be sold on the primary market, as you call it, registered exchanges?

Mr. Metzger: I object to the question as outside the scope of the direct examination. The witness is being asked about a secondary market not considered by him.

His problem was a simple one. He directed himself to it. Now Counsel is asking him a question relating to a different problem.

Mr. Bushby: It is the only market there is.

The Court: He testified on direct about sales of stock, didn't he?

Mr. Metzger: He testified about sales of stock on a direct market. Mr. Bushby's point is that the 20 million shares would have to be sold on the secondary market, and now he is directing himself to questions concerning the secondary market which is beyond the scope of the direct examination.

The Court: Overruled.

Mr. Bushby: It is certainly of much concern to my clients what happens to the 20 million shares, and I think Mr. Boni has been employed here as an expert for the Govern-[fol. 1306] ment to tell us how we do this, and I think Mr. Boni should tell us.

The Witness: Let me answer this question in this way. I testified about the 63 million shares in relation to the primary markets. I also testified that I did not examine the size of the secondary market, but to the extent that there was a secondary market—and I am not prepared to answer the question how big that secondary market is; I at this moment have no idea other than it is probably a substantially big one—that it would become a plus factor, and in that there would be less sold on the New York Exchange than the 63 million which are contemplated.

The Court: The Court will now recess.

(Whereupon a recess was taken in the above-entitled cause until 2:00 o'clock p.m. of the same day, Thursday, March 5, 1959.)

[fol. 1307] Before Hon. Walter J. LaBuy, Thursday, March 5, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to adjournment.

Present: Same as before.

The Clerk: Case on trial.

The Court: Counsel may proceed.

ALFRED BONI, a witness called on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination:—(Continued)

By Mr. Bushby:

Q. Mr. Boni, let us assume the decree proposed by the Government is entered by the Court and this is the first twelve months. My clients, Christiana and Delaware, will receive about two million shares of General Motors stock as a distribution from du Pont. It is handed to the trustee. Now, what does the trustee do? Does he call in some underwriters?

A. That probably would be one way.

Q. And what does he ask the underwriters to do? What kind of a contract does he ask the underwriters to sign? Does he ask them to sign a joint and several commitment?

A. Mr. Bushby, I did not consider those details. Anything I would state here would be an off-the-cuff uncon- [fol. 1308] sidered judgment. I have not considered at this point, the mechanics of this.

Q. You did not consider any mechanics of selling through underwriters and brokers?

A. No, I did not consider the mechanics of it.

Mr. Bushby: In view of that answer, sir, I do not believe I care to ask anything further.

The Court: Any redirect?

Mr. Metzger: Very briefly, your Honor.

Redirect Examination.

By Mr. Metzger:

Q. Mr. Boni, directing yourself to the questions asked by Mr. Cox earlier this morning relating to the difficulties that might occur in du Pont's buying of another 63 million shares of General Motors, you stated that that would pose a different problem. What did you mean by that?

A. That you would be dealing with one buyer. You would be dealing with the demand side of the market in an

entirely different fashion. You are talking about buying here, in the other you are talking about selling.

Q. What is the difference?

A. Well, I think it would be a lot harder to buy because of the lack of supply or the relative lack of supply, and the general immobilization that I talked about, which would be a negative factor, in attempting to purchase, whereas, it is a positive factor in attempting to sell.

We are dealing with the other side of the market here.

Q. One question that was asked you this morning. I do not think you understood the point that was being made I would like to clarify it if I may.

Let us assume that two million shares of General Motors [fol. 1309] stock were offered on the Stock Exchange on any given day or in any given week. Would this have an effect on the price of that stock, either an offer to sell or to buy?

A. You mean on one day?

Q. Yes.

A. Yes, it would have an effect.

Q. Now, relating yourself to the exhibit which was offered yesterday which related to the effect of the various steps in this litigation upon the price of General Motors and du Pont over the period of time, about ten years between then and now, would a market analyst, such as yourself, conceive at any step in this litigation that, let us say, at the dismissals, that the possibility of divestiture had been averted, or when the Supreme Court reversed that that divestiture was now a strong possibility and would then advise his clients to buy or sell, as the case may be?

A. I certainly think he should consider it, yes.

Q. And yet, was there any effect on the price of those stocks by the occurrence of either of these events?

A. None that I could measure.

Q. Mr. Cox spoke of stabilization, Mr. Boni, and in reference to your previous statements in that regard, would you have to have stabilization in order to effect this decree, presuming you had the other safeguards of which you have spoken?

A. It certainly would not hurt. It might help.

Q. Now, what did you mean by unofficial stabilization when you referred to that this morning? Was that a reference to the type of pool selling referred to by Dr. Friend?

A. That would be one side of it, yes.

Q. But your statements on the subject of unofficial stabilization were not as a result of the study, but were [fol. 1310] an offhand statement, as you have indicated?

A. That is correct.

Q. Well, with reference to the chart which compared General Motors without extras as opposed to the composite yield on the stocks in the Standard & Poor's index, did that composite contain certain companies that gave extras during the period of the composite?

A. I am sure it did.

Q. Did it contain companies who had reduced dividends during that period of time?

A. I am sure they did.

Q. Do investors tend to discount these extras?

A. I think that is what our studies showed.

Q. And do they also tend to discount a temporary drop in earnings?

A. If you are speaking of the long term investors, yes. In fact, a temporary drop in earnings, once recognized as being temporary, and any weakness in the stock being displayed as a consequence if it, would bring in some buying.

Mr. Metzger: No further questions. Oh just a moment. May I have the Court's indulgence?

Mr. Metzger: I have no further questions, your Honor.

Recross-examination.

By Mr. Bushby:

Q. You know, don't you, Mr. Boni, that agreements or arrangements between people who are not the underwriters of an issue——

Mr. Metzger: I object to any type of question which is not proper recross. I did not go into that subject-matter, your Honor.

[fol. 1311] Mr. Bushby: It is directly on the subject you inquired about, and nothing else.

The Court: Overruled.

Mr. Bushby: Will the Reporter read what I said, please?

(The question was read, as follows:

"Q. You know, don't you, Mr. Boni, that agreements or arrangements between people who are not the underwriters of an issue—".)

By Mr. Bushby:

Q. (Continuing)—and without notice to the Exchange to support prices in the market is illegal manipulation under the Securities Act of 1934? Don't you know that?

A. I know that; and I, certainly, in my remarks didn't contemplate anything that would be illegal.

The Court: Are there any other questions?

Mr. Bushby: I would just like to make a request of the Court in connection with this so-called report, the Boni, Watkins, Jason report. It was filed here for some reason in September, along with a brief on behalf of the Government; and I think it should appear from the record that the only part of the record is the testimony of this witness and that report is not a part of the record in this case and has no more status than a brief.

I think that ought to be clear on the record.

The Court: Are you through with the witness?

Mr. Metzger: Yes, sir.

The Court: You are excused.

(Witness excused.)

[fol. 1312] The Court: Call the next witness.

Mr. Reycraft: Mr. Hill, will you take the stand, please?

Guy R. Hill, previously called as a witness on behalf of the Government, having been previously duly sworn, was recalled, examined and testified further as follows:

Mr. Reycraft: Will the reporter please mark for identification as Exhibit 438 a document headed, "Aluminium Limited, Data with Reference to Shareholdings by Stockholders of Alcoa, Who Became Subject to Provisions of Stock Disposal Judgment."

(Thereupon said document was marked Government Exhibit 438 for identification.)

Direct Examination.

By Mr. Reycraft:

Q. Mr. Hill, will you describe that document, please?

A. This document presents certain summary material with reference to the holdings of people who became subject to the stock disposal judgment in the United States versus the Aluminum Company of America as of the date of Judge Knox's final judgments—and that is July 6, 1950—and as of the date of the stock disposal judgment, January 6, 1951; then the holdings of the stockholders as of the date of the most recent report, which goes to the fourth quarter of 1958.

Q. Was this document prepared under your direction, Mr. Hill?

A. It was.

Mr. Reycraft: I offer Government's Exhibit 438.

Mr. Cox: No objection.

The Court: It is admitted.

[fol. 1313] (Said document; so offered and received in evidence was marked Government Exhibit 438.)

Mr. Reycraft: Will you mark for identification Government's Exhibit 439, which is a document entitled, "Aluminium Limited, Number of Common Shares Sold Pursuant to Stock Disposal Judgment, by Years 1951-1958."

(Thereupon said document was marked Government Exhibit 439 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, will you describe Government's Exhibit 439 for identification? Was this prepared under your direction?

A. Yes, it was prepared under my direction.

Q. Will you describe it?

A. The first column sets forth in terms of years the number of shares of Aluminium stock, common stock, which have been sold by persons subject to the stock disposal judgment.

This might be an appropriate place to note that the stock disposal judgment has two classes of stockholders,

those whose voting rights are restricted, and those who are ordered to sell or otherwise dispose of stock.

Now the reports up through 1951 give detail on sales for the restricted stockholders. There was a reason for that, because those sales could be counted under the timetable in the judgment.

Thereafter, the sales set forth here are all those persons who were required to dispose of stock. The tabulation does not include gifts and follows the captions here.

The Column 2 figure merely states in terms of present shares of Aluminium Limited the number of shares which have been put out in three successive rights offerings. [fol. 1314] Mr. Reycraft: I offer Government's Exhibit 439.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 439.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 440, a document headed, "Aluminium Limited, Number of Shares of Common Stock Disposed of by Shareholders Subject to the Stock Disposal Judgment, Classified according to Method of Disposal."

(Whereupon said document was marked Government Exhibit 440 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, was Government's Exhibit 440 for identification prepared under your direction?

A. It was.

Q. Will you describe it?

A. This is a compilation setting forth in as much detail as is available the methods used in stock disposal. The upper part of the table is based in its entirety on the reports submitted by the corporate trustee, the Chemical Corn Exchange Bank. The classification used is that of the corporate trustee, the Chemical Corn Exchange Bank. Public offerings are all secondary distributions. "Stock Exchange sale" is the term used by the Chemical Corn Exchange Bank. I accepted their information, and I assumed that they had ways of checking, that it was in fact "Stock Exchange sale."

"Private Placement" is also a matter of classification by the Chemical Corn Exchange Bank.

The next column reflects total sales and gifts to charitable and religious organizations, which are set forth to arrive at a total stock disposal.

[fol. 1315] The trusteeship was terminated in December, 1957. The last report filed with the Chemical Corn Exchange Bank was through the third quarter of 1957. Using that same classification, I have projected the disposals through December 31, 1958. As shown in this tabulation in terms of footnotes, what I have called "Stock Exchange sale" is merely sales through stock exchange firms. Some of it may go the over-the-counter route, for all I know. It is merely a segregation of those items which clearly were secondary distributions and those which were dribbled out in a piecemeal fashion through well-known stock exchange firms.

Mr. Reycraft: I offer Government's Exhibit 440.

Mr. Bushby: I object, if your Honor please. It doesn't give relevant information. For example, it doesn't state which of these offerings were registered. This is a very material fact.

The Witness: May I answer?

By Mr. Reycraft:

Q. Mr. Hill, would you care to comment on that?

A. I have made some inquiry on that, Mr. Bushby, and one of the Aluminium issues, including the first one—and I am speaking of the secondary distributions—the first one which was a large one on February 27, 1951, in excess of 30 million, was a non-registered secondary, just a routine secondary distribution. There was no prospectus on file with the SEC and to confirm my impression I looked through some of the documents which had been secured through the deposition of Mr. Emerson and looked at their listings. I am sure they are very careful and workmanlike, and these Aluminium issues were listed by them as non-registered secondaries.

[fol. 1316] Mr. Bushby: Well, except for the first ones——

The Witness: No, the first one was an unregistered secondary also.

Mr. Bushby: You say all are non-registered?

The Witness: Yes.

Mr. Bushby: On that ground, I object as wholly irrelevant to this case. The sale of our stock would have to be a registered secondary, which is quite different.

The Court: Overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 440.)

Mr. Reycraft: Will you mark as Government Exhibit 441, for identification, a document headed, "Aluminium Limited, Number of Shares of Aluminium Limited Common Stock Sold on Stock Exchanges by Shareholders Subject to the Stock Disposal Judgment Compared with Round-Lot Trading Volume for Aluminium Limited Common Stock on the New York Stock Exchange, 1951 Through Third Quarter of 1957."

(Thereupon said document was marked Government Exhibit 441, for identification.)

By Mr. Reycraft:

Q. Mr. Hill, was Government Exhibit 441, for identification, prepared under your direction?

A. It was prepared under my direction.

Q. Will you describe it, please?

A. Column 1 details Stock Exchange sales by selling shareholders as taken from the previous Government exhibit, and set opposite is the volume of round-lot trading on the New York Stock Exchange, and the percentage relationship is stated in the third column.

[fol. 1317] Mr. Reycraft: I offer Government Exhibit 441.

Mr. Bushby: Same objection. It is the same thing.

Cross examination (Continued)

By Mr. Gribbon:

Q. Mr. Hill, are the share figures in Column 1 of this exhibit adjusted for subsequent splits?

A. Yes. The figures are all stated in terms of present shares of Aluminium Limited, a common denominator.

Q. So that actually these figures on Column 1 represent the proper number of shares that were sold at that time?

A. No. In 1951 you would multiply by 6. Both the Stock Exchange volume and these sales through Stock Exchanges —I mean the Stock Exchange trading volume and the sales by selling shareholders through Stock Exchanges have been adjusted to a common denominator to reflect the two successive stock splits.

Q. Have your figures in Column 2 been similarly adjusted?

A. Yes.

Q. It has been adjusted all the way through?

A. Yes, for comparability.

The Court: Overrule the objection.

(Said document, so offered and received in evidence, was marked Government Exhibit 441.)

Direct examination:—(Continued)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 442 a document headed, "Aluminium Limited Shares of Common Stock Outstanding at end of year 1950 through 1958, round Lot Trading Volume for [fol. 1318] Aluminium Limited Common Stock on the New York Stock Exchange 1950 through 1958."

(Thereupon said document was marked Government Exhibit 442 for identification.)

By Mr. Reycraft:

Q. Was Government Exhibit 442 for identification prepared under your direction?

A. That was prepared under my direction.

Q. Will you describe it, please?

A. It sets forth in the first column opposite the year a statement of shares, common shares of Aluminium Limited outstanding at the end of the year, and it is stated in terms of present shares. Similarly the round lot trading volume on the New York Stock Exchange is stated in terms of present shares, and the percentage relationship of the trading volume of stock outstanding is stated in the third column.

Mr. Reycraft: I offer Government Exhibit 442.

The Court: It is admitted.

(Said document, so offered and received in evidence was marked Government Exhibit 442.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 443 a document headed, "Aluminium Limited, Number of Shares of Common Stock Held by Shareholders Subject to Stock Disposal Judgment and Approximate Market Value of Such Shares, by Months, 1951-1958."

(Thereupon said document was marked Government Exhibit 443 for identification.)

By Mr. Reycraft:

Q. Was Government Exhibit No. 443 prepared under [fol. 1319] your direction?

A. This exhibit was prepared under my direction.

Q. Will you describe it, please?

A. The exhibit sets forth the number of shares stated in terms of the present share basis which were sold by persons subject to the stock disposal judgment by months. That is the nearest pin-pointing which I think is practicable. Beyond that it becomes very difficult. It sets it out for the entire period.

Also dollar amounts have been estimated for these sales where transactions could be identified with a special offering or a secondary distribution. When we knew the exact price per share, that amount was used. Otherwise the dollar amount of the stock being put on the market was estimated in terms of the month end closing price.

The reports filed do not have any dollar amounts on them. If dollar amounts are desired to give perspective some such device is necessary.

Mr. Reycraft: I offer Government's Exhibit No. 443.

Mr. Bushby: I object on the ground that the circumstances are not similar. There is no registered offering.

I object on the further ground that it is pure guess to multiply the number of shares sold in a month by a price at the end of the month. It has no relation to the price received whatever.

The Court: Overruled.

(Said document so offered and received in evidence was marked Government Exhibit 443.)

Mr. Reycraft: Will you mark for identification as Government Exhibit 444, a document entitled, "Com-
[fol. 1320] mon stock of Aluminium Limited, Round Lot trading volume, by Months, 1950-1958, on New York Stock Exchange."

(Whereupon said document was marked Government Exhibit 444 for identification.

By Mr. Reycraft:

Q. Mr. Hill, was Government Exhibit No. 444 prepared under your direction?

A. It was.

Q. Will you describe it, please?

A. It is a statement of round lot trading volume on the New York Stock Exchange for common stock of Aluminium Limited, adjusted to the present share basis.

The source of the information is from the Bank and Quotation Record.

Mr. Reycraft: I offer Government Exhibit No. 444.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 444.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 445, a document headed "Common Stock of Aluminium Limited, Closing Prices at End of Month on New York Stock Exchange, 1950-1958?"

(Whereupon said document was marked Government Exhibit No. 445 for identification.)

By Mr. Reycraft:

Q. Was Government Exhibit No. 445 prepared under your direction?

A. This exhibit was prepared under my direction.

Q. Will you describe it, please?

A. It is a statement of closing prices at the end of months for Aluminium Limited common stock, by months,
[fol. 1321] for the years 1950 through 1958.

The source is the Bank and Quotation Record, and the prices have been adjusted to reflect the several stock splits, so that they are homogeneous throughout.

Mr. Reycraft: I offer Government Exhibit No. 445.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 445.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 446, a chart headed "Aluminium Limited, 1950-1958" by Months.

(Thereupon said document was marked Government Exhibit 446 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, was Government Exhibit No. 446 prepared under your direction?

A. This exhibit was prepared under my direction.

Q. Will you describe it, please?

A. It is a graphical representation of items, certain items set forth in the previous exhibits in this series.

It shows the price per share, which I believe is just the exhibit immediately preceding this.

It shows the trading volume on the New York Stock Exchange. It shows the monthly sales volume by selling shareholders, and it also shows the free rights offerings in terms of the number of shares offered.

Mr. Reycraft: I offer Government Exhibit No. 446.

The Court: It is admitted.

(Said document, so offered and received in evidence, [fol. 1322] was marked Government Exhibit No. 446.)

Mr. Reycraft: Will you mark for identification as Government Exhibit No. 447, a chart which bears the number 1 and follows the language "End of Month Closing Prices, New York Stock Exchange for Aluminium Limited," and contains three lines, graph lines.

(Thereupon said document was marked Government Exhibit 447 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, was Government Exhibit No. 447 prepared under your direction?

A. This was prepared under my direction.

Q. Will you describe it, please?

A. The line marked number 1 is for end-of-month closing prices on the New York Stock Exchange of Aluminium Limited common stock, stated in terms of index numbers, January 31, 1950, as the base.

In other words, successive prices are just percentages of that particular base.

The second one is Standard & Poor's Daily Stock Price Index for Industrial Common Stocks at the end of the month, adjusted to a January 31, 1950 base.

Then there is a deflated series here, which represents the Aluminium Limited, if you correct it for market changes as indicated by Standard & Poor's Industrial Index.

Mr. Reycraft: I offer Government Exhibit 447.

Mr. Bushby: Your Honor, I assume I have a standing objection to all this?

The Court: You have. Overruled.

[fol. 1323] (Said document, so offered and received in evidence, was marked Government Exhibit 447.)

Mr. Reycraft: Will you mark for identification as Government Exhibits Nos. 448, 449, 450, 451, 452 and 453, tables which are headed "Stock Turnover Data for Large Companies," the first one 1953 to 1957, and the following tables for the years 1953 through 1957 separately?

(Thereupon said documents were marked, respectively, Government Exhibits 448, 449, 450, 451, 452, and 453, for identification.)

By Mr. Reycraft:

Q. I hand you Government Exhibits 448 through 453. Were these documents prepared under your supervision?

A. These were all prepared under my supervision.

Q. Will you describe them, please?

A. For a series of large companies—I might say that at the time this project was started, we did not want to make a study of highly speculative securities in which the tu n-

over might be several hundred per cent, like, let's say, Glenn L. Martin, or something of that sort, as most turnover tables relate to.

We took, merely for convenience, a list which appeared at about that time in Business Week as the leading companies in terms of earnings as a satisfactory list for such a study.

We took the New York Stock Exchange round-lot trading volume from the Bank and Quotation Record, and took the regional trading exchange volume, which also includes odd-lots, from reports made by the Exchanges to the Securities and Exchange Commission.

[fol. 1324] It would have been possible to have secured a part of the regional trading volume from the Bank and Quotation Record, but whether it is completely true or not, I gained a distinct impression that there was a certain amount of unlisted trading on regional exchanges which would not be picked up in the Bank and Quotation Record that would be picked up in the reports submitted to the Securities and Exchange Commission.

The resultant figure is as broad a base as it is practical to get for trading volume. With reference to some companies, we have work papers here. For some companies, the inclusion of the regional trading makes a significant difference. With others it does not. However, in interpreting them, it must always be borne in mind that certain odd-lot transactions on the New York Stock Exchange are not reflected here.

Mr. Reycraft: I offer Government Exhibits 448 through 453.

Mr. Cox: Are you going to put in the work sheets?

Mr. Reycraft: If you wish so, yes.

(Said exhibits, so offered and received in evidence were marked Government Exhibits 448 through 453.)

Mr. Reycraft: Will you mark for identification——

Mr. Bushby: May I ask one question on these tables, these turnover tables?

Mr. Reycraft: Yes.

Cross-examination.

By Mr. Bushby:

Q. The top one I notice is an average, Mr. Hill, of yours.
A. Yes.
[fol. 1325] Now, how did you get that average? Do you just take the per cents arrived at on the other sheets and add them up and divide by four?
A. The work papers which were distributed made it very clear. Possibly I should also say that the five-year summary here is merely an arithmetic mean of the averages for the five years.
It is not a weighted average.

Mr. Reycraft: Mr. Reporter, I have marked for identification Government's Exhibits 454 through 468, the work papers underlying the tables which were just marked and just described by Mr. Hill.

(Thereupon said exhibits were marked Government's Exhibits 454 through 468 for identification.)

Direct-examination:—(Continued).

By Mr. Reycraft:

Q. Mr. Hill, I hand you Government's Exhibits for identification 454 through 468. Will you describe those documents briefly?
A. These are the work papers from which these charts were made, the percentages. They show the tale in terms of companies, years and exchanges, the volume of stock exchange trading.

Mr. Reycraft: I offer Government's Exhibits——

By Mr. Reycraft:

Q. What are those numbers?
A. This is 454.

Mr. Reycraft: I offer Government's Exhibits 454 through 468.
The Court: They are admitted.

(Said exhibits, so offered and received in evidence were [fol. 1326] marked Government Exhibits 454 through 468.)

Mr. Reycraft: I will next refer to price charts beginning with the Armco Steel Company and going through Texas Gulf Sulphur Company, which will be marked for identication 469 through 498.

(Thereupon said documents were marked Government Exhibits 469 through 498 for identification.)

By Mr. Reycraft:

Q. Mr. Hill, were those documents prepared under your supervision?

A. They were.

Q. Will you describe how they were prepared?

A. The prices given are from the Bank and Quotation Record. They are a 16-month series in accordance with the material which was discussed by Mr. Friend here earlier.

The month-to-month comparisons are detailed below and they are matched in all instances against the similar monthly movement in Standard & Poor's Daily Industrial Stock Index.

Mr. Reycraft: I offer Government's Exhibits 469 through 498.

Mr. Bushby: Now, if the Court please, this is about the fourth attempt to thwart the order of the Court to get tables of this kind in. The first attempt was on Wednesday, February 18. A similar sheet was tendered but they did not have the manager of the underwriting here.

The Court said:

> "If there weren't a further explanation, this could be very misleading to the Court looking at this record. [fol. 1327] It is not complete. So I think the better practice is this, and you save time by offering them as you are prepared to explain them, so they will have some evidentiary value, which they do not have now."

That was repeated in the afternoon of the same day and a suggestion made that Mr. Hill, who made up the tabula-

tion, would somehow correct the missing link, and I made it very plain to Mr. Reycraft that the calling of Mr. Hill would not obviate our objection.

Mr. Reycraft: Your Honor, these charts contain information which is not available from the underwriters, as a matter of fact. Mr. Hill very carefully prepared these price movements over a period of time, which preceeds the offering by a substantial date, and which follows through to approximately one year after the date.

This information simply is not available from the underwriters as I believe the underwriters' testimony here has indicated. These exhibits speak for themselves and we are certainly not trying to circumvent your Honor's ruling.

We have called underwriters to explain many of these issues and we think these documents speak for themselves.

The Court: The objection is overruled.

(Said documents, so offered and received in evidence were marked Government Exhibits 469 through 498.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 499 a chart headed, "Offerings of Com-
[fol. 1328] mon Stock of Industrial Corporations in amounts of Twenty-five Million and Over During the Seven Year Period of 1951 through 1957."

(Thereupon said document was marked Government Exhibit 499 for identification.)

Mr. Reycraft: Mr. Reporter, Government's Exhibit 293 was marked for identification. It is the basis of this chart. This chart has been corrected in several places and I would like to substitute this chart for Government's Exhibit 293.

Mr. Bushby: I object to these papers on the further ground that a large share of them relates to rights offerings. We do not have a rights offering here and that part of it is certainly relevant.

Mr. Reycraft: We have been through all of this, I believe, your Honor.

The Court: Overruled.

By Mr. Reycraft:

Q. Mr. Hill, was Government's Exhibit 293 prepared under your direction?

A. It was.

Q. Will you describe it?

A. It sets forth issues of industrial corporations—common stock issues of industrial corporations in amounts of twenty-five million and over that have come to my attention.

I believe they represent all such issues, but working here in Chicago with an inadequate library, it is subject to [fol. 1329] further checking on that score; but I do not think there are any significant omissions.

If they meet these conditions that there is a 16-month's record of stock exchange trading, three full months of which would be prior to the offering date, that would exclude such issues as Campbell's Soup or Ford Motor Company, which were issues new to the public, even though they were secondary issues.

The amount of the issue and the percentage increase in stock, which is represented by the issue, and certain month-to-month changes were largely the subject matter of Mr. Friend's testimony.

Mr. Reycraft: I offer Government Exhibit 293——

By Mr. Reycraft:

Q. Is that 273?

A. 293.

Mr. Reycraft: I offer Government's Exhibit 293.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 293.)

Mr. Reycraft: Will you mark for identification as Government's Exhibits 499 through 518 Price Charts beginning with Pacific Gas & Electric and going through Virginia Electric & Power Company?

(Thereupon said documents were marked, respectively, Government Exhibits 499 through 518, for identification.)

By Mr. Reycraft:

Q. Mr. Hill, will you describe these exhibits?

[fol. 1330] A. These exhibits, which were prepared under my direction, cover twenty utility stocks, utility common stocks, offered in amounts of 25 million or more.

All of these are new issues. There have been secondaries of some size over that during this period, but so far as I can tell quickly, either they were on the over-the-counter market and you do not have the same price record in terms of stock exchange trading prior to that, or they came from a holding company and there was no prior trading.

The search on this has probably been less than on industrials, but I think, again, it probably represents at least approaches the total number of issues offered during the years '51 to '57 in utilities, common stock, 25 million and over.

Mr. Reycraft: Your Honor, these exhibits were handed to the defendants a very short time ago and I will make a conditional offer subject to their checking. We will have Mr. Hill available for cross-examination during the defendants' case, if that is satisfactory.

Mr. Cox: If it please the Court, these exhibits were, in fact, given to us today, and, of course, we would like to have time to check them. I would like to inquire beyond that for what purpose they are offered?

These are all utilities. They simply show prices for a period of time and something that is called a "Security Offering."

The date, I do not know whether that is the date of offering of the prospectus, or what it is. It seems to me giving full latitude to the rather generous tests of relevancy, that this is really going very far afield.

Dr. Friend, the plaintiff's own expert, testified there is a very great difference between utility companies and a company like General Motors which is engaged in quite a [fol. 1331] different kind of business operation.

I object to them as to the relevancy.

Mr. Reycraft: I suggest, your Honor, that we have had testimony on the AT&T situation, and that these utilities are also relevant. There are differences of degree, but I suggest that they are only that.

Mr. Dallstream: Mr. Reycraft, Mr. Cowen and I have, neither one of us, received these exhibits, and we have been informed that there are none available.

Mr. Reycraft: May we have a short recess, your Honor?

Mr. Dallstream: No, you can furnish them later.

Mr. Reycraft: All right.

Your Honor, I would like to refer next to Government Exhibit 41, which is Table 16. We had a discussion of this exhibit earlier in the case. It is a list of issues prepared by Mr. Hill. Mr. Hill is now here to further identify and describe the exhibit, and I would like to hand it to him for that purpose.

By Mr. Reycraft:

Q. Mr. Hill, was Government's Exhibit 41 prepared under your direction?

A. It was prepared under my direction.

Q. Will you describe it, sir?

A. It is a list of occasions over a 25-year period, from 1933 to 1957, inclusive, when equity securities—that would be both common and preferred stock, and convertible bonds also—that is, when equity securities and convertible bonds were publicly offered in amounts of 50 million and over. [fol. 1332] The term "publicly offered," as used here, includes the rights offerings.

The equity securities and the convertible bonds are shown separately, and the rules for valuation, for inclusion or exclusion, with bonds at par, stocks and proceeds—you will find some issues just under 50 million. Let us say PG&E, for instance—there have been such cases, which came out $100,000 short. It was off the list. It was a mechanical selection of issues, 50 million and over.

Q. And this is a summary table?

A. Yes.

Q. And it does not purport to contain all the information which might be relevant about all these issues, does it?

A. No, it is a check list to show whether they were rights offerings, whether they were underwritten public offerings, whether they were underwritten at all or not. It identifies the managers and the syndicates.

Mr. Reycraft: I would like to re-offer Government's Exhibit No. 41, your Honor.

Mr. Bushby: I renew my objection. It has very partial scraps of information and doesn't show whether the issue was registered, and it doesn't show any detail.

The Court: You will have an opportunity to cross-examine the witness.

Overruled.

Mr. Reycraft: I have nothing further from Mr. Hill.

(Said document, so offered and received in evidence, was marked Government Exhibit 41.)

Cross-examination.

By Mr. Bushby:

Q. Which of these issues was registered, Mr. Hill?

A. Well, I would have to scan the list. None of the [fol. 1333] Aluminium issues would be on here. I think most all of them would be——

Q. Do you know?

A. The bank stocks would not be registered. It would be just a question of going down—the Bank of America——

Q. That doesn't appear on here, and you don't know——

A. Yes, it does—October, 1949, 54,280,000 Bank of America National Trust and Savings Association.

Q. I am not asking about the Bank of America. Of course it wasn't registered; bank stock was exempt. I am asking about these other issues. Do you know whether they were registered or not?

A. Yes. I would have to prepare an additional column to classify them; but, by and large they were registered.

Q. "By and large" doesn't help us, Mr. Hill.

A. Well, except for the bank stocks and rail stocks, I would like to go through meticulously to pick them out. Part of this is based on the stipulation in the investment banking case.

Q. That isn't part of the record in this case.

A. I understand that, but I mean that would be one source?

Q. That is rank hearsay. You don't know this of your own knowledge, do you?

A. I have been forced to look in my time at a good many prospectuses, and know it of my own knowledge, in that sense.

Q. Did you make this up from prospectuses?

A. As stated in the table, yes, I did consult some prospectuses; but, by and large, it was the data published in

the Commercial and Financial Chronicle, which I felt to be quite reliable.

Q. You said it was taken from a record of another case?

A. In the first part. I think the notes do show that it was taken from a stipulation.

[fol. 1334] Mr. Reycraft: This stipulation to which the bankers agreed, Mr. Bushby.

Mr. Bushby: That doesn't make it any better than hearsay here.

Mr. Reycraft: I have nothing further.

Cross-examination.

By Mr. Burnham:

Q. Mr. Hill, will you take Exhibit 293, please, the large chart?

A. If somebody will hand me one.

Q. At whose request was that prepared, Mr. Hill?

A. I think the circumstances of this exhibit were explained in considerable detail during the testimony of Mr. Friend.

Q. Was it at Mr. Friend's request, then, that you prepared this exhibit?

A. No, I prepared it at Mr. Reycraft's request; but the organization and content were as Mr. Friend had clearly stated, there was a general understanding here that this was basic material which he was willing to admit to and from which he was willing to testify.

Q. The organization of the material then was primarily Mr. Friend's, I take it?

A. If you mean the captions setting up the table, the answer is no. I had two brief conversations with him over a period of several days and assembled this material as rapidly as possible; and as to one or two footnotes that were added, they were added because he raised questions about the availability with reference to those particular issues.

I viewed it as a clerical function for something that he wanted; but he didn't sit at my shoulder and dictate.

Q. Now, Mr. Hill, to help me understand it, let's take [fol. 1335] a specific figure on Armco Steel, under the

heading "Number 1;" you see at the top of the page where it says "Stock and Index." There are two columns under No. 1.

A. That is right.

Q. The figure under stock for Armco, No. 1, is plus 3.98, is that correct?

A. That is right.

Q. And that represents what, Mr. Hill?

A. That would represent—bear in mind that they are plotting a series of month-to-month changes—that from the end of a full three months preceding the month of offering to the end of the second month preceding the month of offering, Armco Steel would have moved up 3.8 per cent, measured in terms of the end of the month price.

Q. You said 3.8; you mean 3.9?

A. 3.9, yes.

Q. And moving over to Column 2, again under the heading, "Stock," and reading across from "Armco," the plus 8.20 represents an increase of 8.20 per cent during that month, is that correct?

A. As against the preceding month.

Q. Your new base then was the close of the preeeding month?

A. Yes.

Q. And is that true as we move all the way across, in each case you take a new base at the end of the preceding period, is that correct?

A. That is true, and that is shown, instead of this somewhat complicated language which was shown here, the underlying charts just state boldly, "From February to March" by way of illustration, from March of a given year to April, so it should be read in part with the underlying material.

Q. Now, if for example, then, if a stock moved from a price of 100 to a price of 90, during the first month that [fol. 1336] you were studying, you would register that as minus ten, is that correct?

A. That is right.

Q. Then, if during the following month it moved from 90 back up to 100, that would be registered as plus 11, would it not?

A. That is right.

Q. Because it went up 11 per cent, although it returned only to the original price, is that correct?

A. That is right.

Q. Now, Mr. Hill, is there any figure on this chart for any of these issues which will give us in one figure the total change in price between the three months end preceding the month of offering and the 12 months end following the month of offering?

A. I don't believe there is on this particular chart.

Q. But that can be computed from the underlying data that was identified by Mr. Reycraft and offered?

A. That is correct. There are a multiplicity of computations which can be made, and they may have greater appeal to some people.

Q. Now, Column 4 goes from the end of the month to the offering to one month end following the month of offering, is that correct?

A. Yes.

Q. Column 5 then jumps eleven months, covering a period of one month end following month of offering to twelve month end following month of offering?

A. That is right.

Q. And if the stock had gone down and come back up during that 11-month period, the low point in no sense would be reflected in Column 5, would it?

A. No, but it would be reflected in the price data of high-low-close, which is on the supporting schedule.

Q. On the supporting schedule, but not on this 293.

[fol. 1337] A. I might say without encroaching any of Dr. Friend's prerogatives that I did point out to him these numbers, using this month-end basis, and the 16-month period, and applying a common formula throughout, that you have a number of rights offerings which straddle a monthly period; in other words, the rights—the effective date may be, let us say, April 25, by way of illustration, and the termination may be a May 15th. What is styled here as the month of offering is really the effective date of the rights, because that's the principal matter or material here. Similarly, in a public offering, it is the date of the effective registration, the effective date for the registration.

Normally, since this is a composite, Dr. Friend elected to use this method. If you had used a fixed period prior to the offering date and a fixed period subsequent to the termination of the offering, termination might be a little difficult to figure out in some cases; rights offering, no. You might have had a similar type analysis, but you would have had a considerable additional amount of trouble to work out all of those details.

Mr. Burnham: Thank you for anticipating several other questions.

Do you have the Aluminium Exhibits 438 to 447 handy, Mr. Hill?

The Witness: No, I don't believe I do.

Q. One additional question before we move to Aluminium. Was it Doctor Friend who selected the time periods, the three-month, two-month, and so forth, that was used on the last chart?

A. That is correct.

Q. Turning first to Government's Exhibit 438 on this Aluminium series, Mr. Hill, as of the date of the order, the order requiring the disposal of stock, what was the [fol. 1338] number of shares of Aluminium stock that were required to be disposed of?

A. You mean by Judge Knox's order?

Q. That is correct.

A. Well, the order—the figure I get varies slightly from the order.

Q. Is that because of Footnote No. 1 at the bottom of the page?

A. Yes, because inadvertently certain sales—certain disposals which had already been made had not been reported to the Court. In the correspondence between Mr. Hickman, representing Alcoa, and Counsel for the Trustees, and at other points—I mean even with Judge Knox's opinion itself, but sticking with Mr. Hickman, he said it was always the understanding that credit would be given for the prior sales; and it was a little embarrassing to find that Knox had ordered them to sell something in a quantity which they did not at that moment possess, so it was merely a clerical license. It would have been simpler probably just to conform to Judge Knox's ruling; but that is what the file discloses.

Q. Laying those shares aside, what was—let's call it the effective number of shares required to be sold at the time of the order.

A. In terms of present shares, you mean?

Q. No, I'd like it in terms of the shares that there were then when Judge Knox entered the order.

A. 1,287,975.

Q. And it is only by inflating that amount for the subsequent stock splits, multiplying by 6, in other words, that you arrived at the larger figure?

A. That is right.

Q. What was the price per share of Aluminium in terms of the then shares at the time of Judge Knox's order?

A. We have prices in terms of present stock, that is, adjusted in terms of present stock. Judge Knox's order was in January, 1951—the end-of-month price in terms of [fol. 1339] the present stock of Limited was $16.0833. That odd figure results from adjusting it for the split.

Q. And if multiplied by six to eliminate the effect of your adjustment for splits, it gives you an actual figure of $96.50 per share, does it not?

A. It may. Well, you multiply 16 by 6—yes, that would be $96.

Q. And what was the dollar value of the shares which Judge Knox ordered sold as of the time of the order?

A. That can be computed. We can compute it from the data on the exhibits.

Q. May I simplify it a bit, and call your attention to this Exhibit 438, near the bottom, where you have a heading "Market Value," and then a number 2, ending up with a figure of $134,774,998.

A. Yes, that figure, I am quite sure, includes stock which had already been disposed of and which Judge Knox took into account in the divestiture order.

Q. So that in order to arrive at the dollar figure of the shares of stock actually involved, you would have to deduct from that figure the value of 104,000 odd shares which had already been sold?

A. Shares sold between the date of the final judgment and the stock disposal judgment.

Q. Now, if you will turn just for a moment to Government Exhibit No. 443, the seven-year total figure in the

lower right, number of shares in dollars, is what I want to call your attention to.

If we are to reconvert, if you will, that seven year total number of shares figures to reach the number of shares as they were as of the time of the order, we would have to divide by six, would we not?

A. Yes.

Q. And the total dollar figure you have there, 154 million, some odd hundred thousand, represents the approxi- [fol. 1340] mate value of all of the shares that have been thus far, pursuant to Judge Knox's order?

A. Yes, that is in terms of estimating techniques set forth on the table. That is the way the arithmetic works.

Q. As you described on your direct?

A. Yes.

Mr. Burnham: Nothing further.

The Court: Are there any other questions of this witness?

You are excused.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Andrews: I will ask the reporter to mark this document as Government Exhibit 519 for identification.

(Thereupon said document was marked Government Exhibit 519 for identification.)

Mr. Andrews: I would like to offer Government Exhibit No. 519 for identification. This exhibit consists of a cover sheet, which lists all issues of securities in excess of an aggregate value of $50,000,000, and secondary offerings of securities in excess of an aggregate value of $25,000,000 which were managed or co-managed by the firm of Merrill, Lynch, Pierce, Fenner & Smith of New York, for a time period of January 1, 1950 to February 25, 1959.

In addition to the cover sheet, this exhibit contains the documents which consist of some 21 pages, which are primarily correspondence and telegrams sent or received by the firm of Merrill, Lynch, Pierce, Fenner & Smith in connection with the issues on the cover sheet.

The correspondence and telegrams were obtained from the files of that firm.

The Government, I believe, has an understanding from [fol. 1341] the parties that these documents can be introduced without the necessity of a witness from Merrill, Lynch, Fenner & Smith, and if there is no objection from the parties, I would like to read into the record a memorandum covering this understanding.

Mr. Burnham: Yes, read it.

Mr. Andrews: The memorandum reads as follows:

> "It is understood that certain documents from the files of Merrill, Lynch, Pierce, Fenner & Smith may be introduced in evidence by the Government without the necessity of a witness from that firm, on the understanding that it is the present intention of Defendant du Pont to call as one of its witnesses Mr. Winthrop Lenz of Merrill, Lynch, and that the Government may interrogate Mr. Lenz on his appearance with respect to these documents.
>
> "It is further understood that in event the defendants conclude not to call Mr. Lenz that the Government may itself call him at the close of the defendants' case and interrogate him on the documents as part of its case in chief."

I offer Government Exhibit No. 519.

Mr. Horsky: Your Honor, as negotiator of this memorandum of understanding, I should like to be sure that your Honor appreciates exactly what it is.

Mr. Lenz was to be called by the Government in Chicago for what we understood to be the limited purpose of identifying, for the purposes of satisfying your Honor's ruling on Exhibit 41, certa . of these issues.

Mr. Lenz informed us, and he informed the Government, [fol. 1342] that he would very much like not to come. Since he was going to be a witness, we anticipated for the defendants, we agreed that we would make no objection based on his absence, and we will, therefore, not object on the ground that Mr. Lenz is not here.

On the other hand, I feel perfectly free to object on the basis that these documents are just an attempt to clutter up the record with a lot of completely irrelevant material,

and material which would not in any sense be admissible with Mr. Lenz sitting in that chair.

They consist of nothing, so far as I know, which is signed by Mr. Lenz or received by Mr. Lenz. They are documents, telegrams—for example, I find in here a telegram from a Mr. George Leness to Mr. Fuller in Naples, saying, "Deal big success."

Why do we have to have this kind of material in the record, and how could Mr. Lenz make it admissible if he were sitting here? I submit it should be excluded, except for the top sheet, which I think is relevant and within our limited understanding.

Mr. Burnham: I would like to say just two more words about this.

One, when the memorandum of understanding was presented to me, I had not seen the documents and I was informed that the documents were of the same nature that Mr. Sumner Emerson has testified about on the stand. It was with that understanding that I said yes, I would agree.

I certainly was not agreeing to somebody's file copy of a letter, apparently written by Mr. Martin, about how he arrived at a valuation of some stock.

The Court: Your objection is on the basis of relevancy? [fol. 1343] Mr. Burnham: Not only relevancy, but admissibility. If Mr. Lenz were here, I would still object to the admissibility of a letter by somebody named Martin about how he valued the stock as pure hearsay, your Honor. I don't think it should be admitted in this record.

Mr. Horsky: The letters are not written nor addressed to Mr. Lenz, your Honor.

The Court: Well, your objection goes to the top sheet, too, doesn't it?

Mr. Burnham: No, your Honor. I am with Mr. Horsky on the top sheet.

The Court: What do you say about the others?

Mr. Andrews: First of all, your Honor, I would like to address myself to the fact that I submit to the Court if Mr. Lenz was here, I would hand him these documents, as we did with Mr. Sumner Emerson, and ask him if he could identify them, if they came from his records, and he would say yes, they did.

I would ask if they were written by people in his firm, if not written by himself, and he would say yes, they were.

That would be proper identification, and the document would be admitted. There is no question about it. They needn't be written by Mr. Lenz himself.

The Court: What is the purpose of introducing the correspondence, Counsel?

Mr. Andrews: As far as the relevancy argument, your Honor, this correspondence deals with how these particular issues fared when they were marketed; whether they were successful, unsuccessful; were they, in fact, sold. [fol. 1344] These are the very matters that we brought out with Mr. Emerson by having him testify, and I understood that Mr. Bushby wanted such information whenever we introduced these offerings, and that is what the documents consist of.

Mr. Horsky: If they want to ask Mr. Lenz out here to ask him questions like that, we are agreeable to their so doing. Get his opinion, and not somebody's hearsay.

The Court: Objection overruled.

(Said document, so offered and received in evidence, was marked Government Exhibit 519.)

Mr. Owens: If your Honor please, during the direct examination of Mr. George Russell of General Motors, I introduced for identification Government Exhibit No. 173, which is a notice of an annual meeting of stockholders to be held on May 24, 1957 of the General Motors Corporation.

I believe that that was admitted at the time, although the record is not absolutely clear on that point, and in order to clarify it, I would like to have a determination made with respect to that.

In his objection, Mr. Tierney asked if I would identify the particular pages of the proxy that I wanted to introduce rather than the entire document. I subsequently introduced for identification Government Exhibit Number 174.

In connection with that document, Mr. Tierney suggested that he thought that the complete text of it might be incorporated as part of Government Exhibit 173.

I have made that comparison, and I find that it is a part of Government Exhibit 173, appended thereto as an exhibit. Accordingly, I do not now seek to move the admission of

[fol. 1345] Exhibit 174, but I would like to have a ruling with respect to the admissibility of Exhibit 173 made clear.

The Court: Are there any objections to 173?

Mr. Tierney: Of course, your Honor, a great part of 173 has no relation to this.

What part of that 173 do you like, Mr. Owens?

Mr. Owens: In particular, I refer to the cover page and pages 11 through 28, and exhibits A and B attached thereto and made a part thereof.

They are original attachments to the proxies that went out to the stockholders.

Mr. Tierney: As limited, your Honor, outside of the fact that there is some duplication, we have no objection.

Mr. Owens: I didn't offer 174.

Mr. Tierney: You withdraw 174?

Mr. Owens: That is correct.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 173.)

Mr. Owens: Also at the time I interrogated Mr. Russell with respect to the effect of the commission on the cost of purchases by General Motors of its own stock, we had identified at that point in the record a document which was a memorandum dated December 30, 1957, from George Russell to the Financial Policy Committee dealing with those purchases.

It was Government Exhibit 17 for identification at the taking of his deposition, and I want the record to reflect [fol. 1346] that we now offer that document in that connection as Government Exhibit 178 in the record at this hearing.

The Court: Are there any objections?

Mr. Tierney: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 178.)

Mr. Owens: Also during the testimony of Mr. Sheets of Blyth & Company, we had identified Government Exhibit numbers 76, 77, 87, 88, which was a two-page document.

I understand counsel at that time stated that they were

agreeable to having these documents admitted for the purpose of reflecting the fact that these were before Blyth & Company in connection with the studies that they made in connection with the Ford offering, your Honor.

We deferred making a determination of whether or not we would offer them for that limited purpose. We have now concluded that we would desire to do so.

I would also ask that the reporter mark for identification one other exhibit which is a similar document that was before Blyth & Company in connection with their study in connection with the Ford offering.

(Thereupon said document was marked Government Exhibit 520 for identification.)

Mr. Bushby: Your Honor, you excluded these exhibits, and they just keep coming back and trying to put them in. Your Honor has already ruled on it.

The Court: Counsel says that it was understood that it [fol. 1347] was introduced only for a limited purpose, and they didn't press the admission at the time, but they have thought of it since, and now they would like to introduce it for that limited purpose, showing it was before Blyth & Company.

Mr. Owens: We have introduced a number of exhibits from Morgan Stanley that are the same type of document.

Mr. Bushby: But you didn't think of that when you offered these before. You didn't make any such offer at that time.

Mr. Owens: That is right. We make the offer now.

The Court: Any objections?

Mr. Bushby: I think they are wholly irrelevant.

The Court: For the limited purpose?

Mr. Bushby: Whether Blyth & Company had them before them or not has nothing to do with this case.

Mr. Owens: Certainly the circumstances of the Ford offering has a lot to do with this case.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Government Exhibits 76, 77, 87, 88 and 520.)

Mr. Owens: This last one is Government Exhibit 520, "Market Data for Selected Industrial Corporations." I understand that that is admitted along with the others.

The Court: It is admitted.

Mr. Cox: Do I understand that these Blyth & Company exhibits which have now been offered are not offered for the proof of any facts, but are offered only for proof of [fol. 1348] the facts that they were before Blyth & Company when they were considering the Ford issue, is that right?

Mr. Owens: These are the studies they made in connection with their work on the offer, that is right.

Mr. Cox: I point out to the Court, although I am not going to press the objection, that this is an unusual tactic on the part of the Government. If they had offered them for this limited purpose at the time that the witness was here, we might have been able to ask the witness some questions. Now they do it when the witness is away.

Mr. Owens: If you desire, Mr. Cox, we can recall Mr. Sheets for that purpose.

The Court: They have been received.

Mr. Burnham: This Exhibit 520, Mr. Owens, we are unable to find a copy of it any place, although you tell me we have it?

Mr. Owens: Copies of these were supplied to you at the same time the others were. Do you have a different objection to it than you had to the others?

Mr. Burnham: I would like a copy of it, that is all.

Mr. Owens: In connection with Government Exhibit 41, your Honor, which was a tabulation of the equity and convertible bonds publicly offered in amounts in excess of $50,000 and more, I have obtained copies of certain data in connection with three of those, and I would like to have the data with respect to those marked for identification as Government's Exhibits.

The first of those documents I would like to have marked for identification as Government Exhibit No. 521, consisting of three pages relating to the $54,280,000 offering of 1,199,554 shares of Bank of America, October, 1949.

[fol. 1349] (Said document was marked as Government's Exhibit No. 521 for identification.)

Mr. Owens: I offer Government Exhibit 521 in further amplification of the offering of the Bank of America issue.

The Court: Any objection?

Mr. Bushby: It it wholly irrelevant, your Honor.

Mr. Cox: What are these papers? Where did they come from?

Mr. Owens: These are supplied by Blyth & Company, which was the manager of the underwriting.

Mr. Bushby: Bank stock offerings can have no possible bearing on the issues of this case.

Mr. Cox: Did they come out of the files of Blyth & Company?

Mr. Owens: Yes, they did, Mr. Cox.

Mr. Cox: Have they ever been shown to us before? We had a stack of Blyth papers.

Mr. Owens: I don't believe they have. We only recently obtained them, after your objection was made to Government Exhibit 41.

Mr. Cox: Well, I won't object to it.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 521.)

Mr. Owens: I would like to have marked for identification Government Exhibit No. 522, which is a 4-page document relating to the $68,139,000 issue of shares of Pacific Gas & [fol. 1350] Electric in June of 1952, a 4-page document further identified in the lower right-hand corner with the numbers 99 through 102.

(Said documents were marked Government's Exhibit No. 522 for identification.)

Mr. Owens: I offer Government's Exhibit 522, which also came from the files of Blyth & Company, which is the managing underwriter in that syndicate.

Mr. Burnham: Your Honor, I presume the standing objection we had long ago still applies to this document.

The Court: Yes, you have a standing objection. It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 522.)

Mr. Owens: I would like the reporter to mark for identification as Government's Exhibit 523, which is a similar document from the files of Blyth & Company, relating to

the $65,219,000 offering in September of 1953. It is a 3-page document.

It has the numbers in the lower right-hand corner 96, 97 and 98.

(Said document was marked Government's Exhibit No. 523 for identification.)

Mr. Owens: I offer Government Exhibit 523.
The Court: Any objection?
Mr. Cox: No objection.
Mr. Bushby: The same.
The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit No. 523.)

[fol. 1351] Mr. Ludlow: Your Honor, the transcript does not clearly reflect the status of a few documents, and for the sake of clarifying the record, and with the concurrence of the parties, I would like to make a statement regarding those documents.

Government's Exhibits Nos. 10, 30, 45, 54, 61, 104, 108, 110, 111, 130, 171, are considered to be in evidence.

Mr. Burnham: Well, your Honor, he read that so fast we were not able to check all this.

Mr. Bushby: Well, we have never——

Mr. Burnham: Oh, I am informed that that was checked before by my associate.

The Court: Very well. They are admitted if they have not been previously.

(Said documents, so offered and received, were marked Government's Exhibits Nos. 10, 30, 45, 54, 61, 104, 108, 110, 111, 130, and 171.)

Mr. Reycraft: Your Honor, the first three documents here consist of a letter from Goldman & Sachs Company, a summary of the Sears Roebuck Company $350,000,000 debenture issue, and an analysis of that issue.

We have under subpoena the managing partner of that firm. I would like to ask counsel if they have any objections to their being introduced on the ground that no witness was present.

Mr. Bushby: It is wholly irrelevant.

The Court: It is admitted.

Mr. Reycraft: These are 524, 525 and 526.

(Said documents, so offered and received in evidence, [fol. 1352] were marked Government's Exhibits 524, 525, and 526.)

Mr. Reycraft: This last series of documents consists of documents supplied by the du Pont Company relating to the exercise of its right to purchase General Motors Stock in 1955.

Will you mark for identification as Government's Exhibit 527 a memorandum from the Treasurer to members of the Finance Committee, dated January 5, 1955?

(Thereupon said document was marked Government's Exhibit No. 527 for identification.)

Mr. Burnham: Your Honor, I object to the relevancy of that. I don't see what difference it makes what du Pont did about exercising its rights.

Mr. Reycraft: I suppose du Pont's acquisition of 3,000,000 shares of stock of General Motors is relevant.

Mr. Burnham: Well, I think that fact is already in the record. I do not know what these underlying documents have to do with it.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 527.)

Mr. Reycraft: Will you mark for identification as Government Exhibit 528 a memorandum from the Treasurer to members of the Finance Committee, dated January 12, 1955?

(Thereupon said document was marked Government Exhibit 528 for identification.)

Mr. Reycraft: I offer Government's Exhibit 528.

[fol. 1353] Mr. Burnham: Same objection.

May we have a standing objection?

The Court: Yes, you may have a standing objection.

It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 528.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 529 a document headed "Extract From Minutes of Finance Committee Meeting, January 17, 1955"?

(Thereupon said document was marked Government Exhibit 529, for identification.)

Mr. Reycraft: I offer Government's Exhibit 529.
The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 529.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 530, a document headed, "E. I. du Pont de Nemours and Company, Board of Directors, Question of du Pont Company Exercising Its Rights to Subscribe for Additional Shares of General Motors Corporation Common Stock," and dated January 19, 1955?

(Thereupon said document was marked Government Exhibit 530, for identification.)

Mr. Reycraft: I offer Government's Exhibit 530.
The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 530.)

Mr. Reycraft: Will you mark for identification as Gov-
[fol. 1354] ernment's Exhibit 531 a memorandum from "Finance Committee to Board of Directors, E. I. du Pont de Nemours and Company, dated January 17, 1955"?

(Thereupon said document was marked Government Exhibit 531, for identification.)

Mr. Reycraft: I offer Government's Exhibit 531.
The Court: It is received.

(Said document, so offered and received in evidence, was marked Government Exhibit 531.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 532 a memorandum headed, "Finance Committee, E. I. du Pont de Nemours & Company; Question of du Pont Company exercising its rights to subscribe for additional shares of General Motors Corporation common stock", dated February 4, 1955.

(Thereupon said document was marked Government Exhibit 532 for identification.)

Mr. Reycraft: I offer Government's Exhibit 532.

(Said document, so offered and received in evidence, was marked Government Exhibit 532.)

Mr. Reycraft: Will you mark for identification as Government's Exhibit 533 a memorandum headed, "Extract From Minutes of Finance Committee, February 21, 1955."

(Thereupon said document was marked Government Exhibit 533 for identification.)

Mr. Reycraft: I offer Government's Exhibit 533.
The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 533.)

[fol. 1355] Mr. Reycraft: Will you mark for identification Government's Exhibit 534, a memorandum from the Treasurer to the Finance Committee, dated February 9, 1955.

(Thereupon said document was marked Government Exhibit 534 for identification.)

Mr. Reycraft: I offer Government's Exhibit 534.
The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 534.)

GOVERNMENT RESTS

Mr. Reycraft: That concludes the Government's evidence, your Honor.
Mr. Dallstream: Do you rest?
Mr. Reycraft: Yes, we do.

(Whereupon the Plaintiff rested its case in chief.)

STATEMENT BY MR. DALLSTREAM

Mr. Dallstream: If the Court please, I would like to advise your Honor that late last Fall an order was entered directing me to file with the Bureau of Internal Revenue a

request for a ruling on the so-called take-down plan, which was filed as a part of the suggested judgment by the amicus.

On February 9 we held a conference in the general counsel's office in Washington, attended by practically all of the defendants. At that time it became certain that it was advisable that certain clarifying material be filed with the Government and a supplemental brief.

That has been done and I have handed your Honor a copy of it so that you may be advised of the status of the situation.

It is not my purpose to request the filing of an amended [fols. 1356-1357] judgment at this time, but only in the event that the ruling is handed down.

The Court: When do you expect the ruling?

Mr. Dallstream: Well, we had been hoping we would get it before this time, but I imagine it will now take two or three weeks before we can expect it.

The Court: Well, do counsel in the case still wish to take one week of respite?

Mr. Cox: We should like a week of respite if that is agreeable with the Court, your Honor.

The Court: Well, that will be a week and a day, then, I presume, because you will want to start on a Monday.

Mr. Cox: I think that will be better, subject to your convenience.

The Court: So the trial of this case then will be recessed until March 16th.

Mr. Cox: Monday.

The Court: Ten o'clock.

Mr. Cox: Thank you, your Honor.

(Whereupon an adjournment was taken in the above-entitled cause until Monday, March 16, 1959, at 10:00 o'clock, a.m.)

[fol. 1358]

Transcript of Proceedings of March 16, 1959

COLLOQUY BETWEEN COURT AND COUNSEL FOR SUBMISSION ON BRIEFS WITHOUT ARGUMENT AND TIME FOR FILING SUCH BRIEFS

The Court: I think I should discuss with counsel at this time the procedure that should be followed after the close of the evidence.

As far as the Court is concerned, the Court would prefer that there be no oral arguments and that counsel submit briefs; and unless there is an objection to it, that would be the procedure.

Mr. Reycraft: No objection, your Honor.

The Court: There is no objection from the Government.

Mr. Cox: No objection, your Honor.

Mr. Bushby: No objection.

Mr. Burnham: No objection, your Honor.

The Court: I think I should fix the time now, so that counsel will be prepared.

At the close of the evidence the Court will allow the Government 15 days in which to file its brief, and the suggested findings of fact and conclusions of law. The defendants will be allowed the same period, and the amici will be allowed ten days thereafter for their report; and the Government will be allowed ten days thereafter for reply.

Mr. Reycraft: Your Honor, we would appreciate it if we could have 30 days initially. We certainly are anxious to move ahead, but 15 days, I believe, will press us a good deal.

The Court: It seems to me that with five able lawyers, the Government should certainly be able to present a brief within 15 days, at least.

Mr. Reycraft: We will try, your Honor.

[fol. 1359] The Court: The Court will change it to 15 days. That means 15 days for defendants also.

Mr. Bushby: Is that a co-extensive period, your Honor, to be submitted at the same time?

The Court: No—following. The Government will file theirs first in 15 days. 15 days thereafter the defendants, 10 days thereafter the amicae; then 10 days thereafter the Government's reply.

And include in your briefs, with your briefs, the suggested findings of fact and the conclusions of law.

You may proceed.

Mr. Dallstream: Will the reporter please mark this as Amicus Dallstream Exhibit Number 2 for identification?

(Thereupon said document was marked Amicus Dallstream Exhibit 2 for identification.)

OFFER IN EVIDENCE BY MR. DALLSTREAM

Mr. Dallstream: If the Court please, although, as expected, du Pont Company will proceed first with their defense, I think it is agreed by everyone concerned that it would be desirable that there be presented in this record the request for ruling on the Government Plan, the various letters and amendments which were presented to the Government, and the ruling of the Tax Department on the Government's Plan.

That has been marked as Amicus Dallstream's Exhibit No. 2, for identification, and I now offer it in evidence.

Mr. Cox: I have no objection.

Mr. Reycraft: No objection.

The Court: It is allowed.

(Said document, so offered and received in evidence, was marked Amicus Dallstream Exhibit 2.)

[fol. 1360] The Court: I omitted to state that I would also appreciate it if the Government would submit its exhibits and not wait until the end of the trial. As soon as it is convenient, I would like to have you arrange them, and deliver them to my secretary.

Mr. Reycraft: Yes, sir.

The Court: Counsel may proceed.

Mr. Cox: May it please the Court, as Mr. Dallstream indicated, it has been agreed among Counsel that the du Pont Company will begin with the presentation of its evidence this morning.

We intend to begin by presenting evidence with respect to one aspect of this litigation that was almost entirely ignored in the evidence offered by the Government. That aspect of the case has to do with the impact of taxes which would be imposed upon the stockholders of du Pont, if the proposed Government Plan should be adopted.

As I explained to the Court in my opening statement, these tax consequences are extraordinarily severe, and their impact differs among different classes of shareholders. It seems to us important that the Court should be fully informed with respect to these tax consequences and with respect to the extent to which those consequences differ among different categories of stockholders. It is therefore to this aspect of the case that the first part of our evidence will be directed.

Our first witness will be Dr. Benjamin Tepping, who will be examined by Mr. Gribbon.

Mr. Gribbon: I would like to call Dr. Benjamin Tepping to the stand, please.

[fol. 1361] BENJAMIN J. TEPPING, a witness called on behalf of the defendant, E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you state your name and address, please?

A. My name is Benjamin J. Tepping. My address is 1027 Lakeside Avenue, Philadelphia, Pennsylvania.

Q. Where are you employed, Dr. Tepping?

A. I am employed by National Analysts, Incorporated, of Philadelphia.

Q. And in what capacity are you employed by National Analysts, Inc.?

A. I am a mathematician.

Q. For how long have you been employed by National Analysts, Inc.?

A. About four years.

Q. Where are the offices of National Analysts located?

A. The offices are at 1015 Chestnut Street in Philadelphia.

Q. What is the nature of the business of National Analysts, Inc?

A. National Analysts engages in three kinds of work.

First, National Analysts does a considerable number of sample surveys concerned with market research and opinion polls.

Second, we conduct a statistical laboratory to measure the psychological responses of people to various kinds of materials.

Third, we do work in operations research, which is concerned with the application of mathematical principles to management problems and operational problems.

Q. Would you describe briefly by way of example a few of the projects on which National Analysts have recently [fol. 1362] been employed?

A. We have engaged in a survey for the United States Department of Agriculture. This survey was designed to determine what kinds of food people use; the vitamin content; their costs; and the distributions of types of foods among families of different kinds. This is based on a probability sample of households.

We have done a survey for the Ford Motor Company, which was concerned with determining the characteristics and attitudes toward the company and toward investment in general of stockholders of record of the Ford Motor Company.

We have done surveys for the Federal Reserve Board, one of which was concerned with the financing of new car purchases, and another concerned with the purchase of homes by people.

Q. Was National Analysts, Inc. employed by Covington & Burling, counsel for du Pont in this litigation?

A. Yes, it was.

Q. What was the purpose of its employment?

A. To conduct a survey of the owners both of record and in other ways, the owners of du Pont stock, to estimate two things: First, the total amount of taxes that would be payable by such people in the event that there was a distribution of General Motors stock to them in proportion to their owning of du Pont stock, with certain conditions upon that assignment.

The second objective of the survey was to discover what kinds of people and other entities were owners of du Pont stock.

Q. Now, what assumptions were you asked to make with respect to the year in which any such distribution of [fol. 1363] General Motors stock might take place?

A. We were to confine ourselves to the situation as it existed in 1957. We were concerned with the people who owned the stock as of December 31, 1957. We were concerned with the income tax laws as they existed for 1957, with the incomes of owners as of 1957, with the kind of people who owned the stock as of 1957.

Q. So then is it fair to say that throughout the estimate to which you will be testifying, your testimony is confined in effect to the year 1957? You have frozen the situation as of 1957?

A. That is correct.

Q. You have made no attempt to project any changes of tax rates that might take place hereafter?

A. That is correct.

Q. Nor have you attempted to project any changes in the income situation of du Pont stockholders that might take place?

A. That is correct.

Q. Did National Analysts conduct such a survey and prepare the estimates that you have described.

A. Yes, we did.

Q. What was your personal responsibility in the conduct of this survey and preparation of the estimates based thereon?

A. I had overall responsibility for this survey.

Q. What did that include?

A. This included the design of the sample, participation in the design and preparation of the questionnaire forms that were used; control of the procedures for receiving and reviewing the materials that were received from respondents; specification of the methods of computation used on these data, and specification of the tabulations that were finally made.

Q. What was your responsibility with respect to the [fol. 1364] results of the survey, the estimates themselves?

A. I was responsible for those estimates.

Q. Are you prepared to testify as to the manner in which the survey was conducted and to state the estimates that National Analysts have made based on that survey?

A. Yes, I am.

Q. Doctor Tepping, what has been your experience in the fields of mathematics and statistics?

A. Well, I have the degrees——

Q. First, your education.

A. I have the degrees of B.A., M.A., and Ph.D in mathematics from the Ohio State University.

I taught mathematics at Ohio State University. In 1940, I went to the Bureau of the Census as mathematical statistician. I was there until 1955, in various assignments as mathematical statistician.

Q. What were your principal assignments during the fourteen-year period you spent with the United States Bureau of the Census?

A. There were, I suppose, two assignments that covered the longest periods.

I was, over a period of some years, five or six, I think, Chief of the Sampling Research Unit in the Office of the Director of the Census.

Just before I left the Bureau of the Census, I was Chief of the Statistical Method Section in the Division of Agriculture of the Bureau of the Census, where I was responsible for the mathematical and statistical aspects of the 1955 Census of Agriculture.

Q. Have you had any experience in teaching matematics and statistics?

A. Yes. In addition to teaching mathematics at the Ohio State University, I have taught fairly continuously during [fol. 1365] my residence in Washington at the Graduate School of the Department of Agriculture, where I taught various courses in mathematical statistics.

I have taught at the American University in Washington. I taught courses in sampling in several summer institutes at the University of Michigan. While on a year's leave of absence from the Bureau of the Census, I was visiting lecturer and research associate at the University of Michigan, where I taught courses in mathematical statistics, and consulted on sample designs.

Q. Do you presently engage in any teaching?

A. Yes, I do. I am at present Associate Professor of Statistics at the University of Pennsylvania.

Q. For how long have you been in that position?

A. This is my third year.

Q. Are you a member of any professional societies in the fields of mathematics and statistics?

A. Yes. I am a member of the American Mathematical Society. I am a member of the American Statistical Association, and also a Fellow of that Association, and President of the Philadelphia Chapter of the Association.

I am a member of the Institute of Mathematical Statistics, the Institute of Management Sciences, the Society for Industrial and Applied Mathematics, and the American Association for the Advancement of Science.

Q. Are you the author of any works in the field of mathematics and science that have been published?

A. Yes. I am the author of papers that have been published in the Journal of American Statistical Association, in the American Sociological Review. I am one of the coauthors of a publication of the Sampling Staff of the Bureau of the Census, which was published by the Government Printing Office and is entitled, "A Chapter in Population Sampling."

[fol 1366] I wrote several of the sections that have been included in one of the standard treatises on sampling, whose principal authors are Hansen, Hurwitz and Madow.

Q. What is the name of that textbook?

A. "Sample Survey Methods and Theory," which is a work in two volumes.

Q. During the period of your employment with the Bureau of the Census, Doctor Tepping, did you engage in any governmental work outside of the normal activities of the Bureau?

A. Yes, particularly in my capacity as Chief of the Sampling Research Unit, I was frequently consulted by other Government agencies, as well as by private organizations and businesses and industries, on the design of samples which they were contemplating working through.

Q. Did you have any specific assignments of this nature for other Governmental departments?

A. Yes. I was involved in a survey of radio listening habits which was conducted by the Federal Communica-

tions Commission. I was involved with some surveys made by the Post Office Department.

Q. Did you do any work for the War Department during this period?

A. I had an assignment in 1947 to visit Germany, at the request of the War Department, to consult with their people there who had been conducting a census of the population and of agriculture in the American zone of occupation.

I was the delegate of the United States to the Caribbean conference of statisticians.

Q. When was that held? Was that in 1951?

I believe that was 1951.

Q. Yes. Did you have any function with the Civil Serv-
[fol. 1367] ice Commission with respect to statistics?

A. I was a member of the board of expert examiners for the Civil Service Commission in the field of statistics.

Q. Now, Doctor Tepping, turning to the survey which National Analysts conducted of the du Pont shareholders, did you in that survey attempt to elicit information from all of the du Pont shareholders?

A. No, we did not.

Q. On what basis did you conduct the survey?

A. We were instructed to omit from the scope of our survey any of the shares of du Pont that were held by Christiana Securities Company, Delaware Realty, the du Pont Thrift Fund, shares held by organizations known to du Pont to be insurance companies, charitable, educational or fraternal organizations and shares held by non-resident aliens and foreign organizations.

Q. Before we proceed to consider the shareholders that were within the scope of your survey, let me direct your attention first to the theory on which the survey was conducted.

I believe you testified that you did not attempt to elicit information from all of the shareholders. On what theory did you make the selection of shareholders?

A. The survey of those shareholders that were within the scope of the survey was conducted upon the basis of probability sampling.

Q. Would you explain what is meant by probability sampling?

A. Probability sampling is a method of sampling in which the probability of selection is known in advance of selection for every unit of the population being surveyed and for every possible combination of such units.

This makes it possible on the basis of well established [fol 1368] mathematical statistical theory, not only to be able to state firmly that the estimates are unbiased, but also it makes it possible to estimate from the sample itself measures of the sampling error of the estimates derived from the sample survey.

Q. Was the survey of du Pont shareholders conducted on this theory of probability sampling that you have described?

A. Yes, it was.

Q. Are there other types of procedures that are sometimes used in sampling surveys besides that of probability sampling?

A. A distinction is made between probability sampling on the one hand and various kinds of judgment sampling on the other.

In judgment sampling, of which there are many varieties, at some point judgment is exercised by someone with respect to which particular units of the population are to be included in the questioning.

Q. Now, this was not judgment sampling that you used in this case?

A. This was not a judgment sample. This was a probability sample.

Q. Now, you have stated that the validity of the survey conducted by probability sampling can be determined on the basis of accepted mathematical theory; is that mathematical theory which prove the validity of this survey recognized in text books?

A. Yes, it is. There are a number of standard text books or treatises on this subject.

Would you like me to read them?

Q. Would you state for the record a few of the standard treatises that do recognize the theory of probability sampling?

A. One of them is the work which I have already mentioned by Hansen, Hurwitz & Madow, whose title is Sample Survey Methods and Theory. This was published in 1953.

[fol. 1369] A second work is that by William G. Cochran, entitled Sampling Techniques, and published also in 1953.

A work by Frank Yates, Sampling Methods for Censuses and Surveys, published also in 1953. This was a second edition of that work.

A work by Sukhatme, an Indian statistician. The Indians have contributed considerably to the most recent theory in this area. Sukhatme, is spelled, S-u-k-h-a-t-m-e. The title of that work is Sampling Theory of Surveys with Applications, published in 1954.

A work by W. Edwards Deming, entitled Some Theory of Sampling, published in 1950.

Q. Now, Dr. Tepping, if you had not conducted your survey on the basis of probability sampling, what method would you have used to elicit the necessary information from the du Pont shareholders?

A. In my judgment the only reasonable alternative would have been to conduct a complete census of all such stockholders.

Q. And would such a complete census have provided a more precise result than was obtainable through a probability sampling survey?

A. Probably so. It should be recognized, however, that a survey conducted on so large a scale as a complete census of all the du Pont stockholders would be much more difficult to control during the processes, and my judgment would be that errors of processing could hardly be avoided, and that we could not as a practical matter conduct a survey with the same care as was exercised in the sample survey.

Q. Now, what would be the basis for these errors you have suggested that would come about in a complete census?

A. Simple clerical errors for the most part. The fact [fol. 1370] that supervision of the clerks performing the tasks of reviewing the received questionnaires, of punching the cards, of doing whatever manual computations were necessary, and so forth— that errors made by these clerks could not so easily be controlled in magnitude or number.

Q. Why did National Analysts determine to conduct a survey on the basis of probability sampling rather than to conduct a complete census?

A. Well, first, an examination of the problem indicated to us that it was possible with a probability sample to obtain estimates that were precise enough for the purpose that was specified.

In the second place, a complete census of stockholders would have involved a tremendously larger cost as well as giving opportunity, as I mentioned a moment ago, for the introduction of errors in the processing.

Q. Now is there any basis on which the results of a probability sampling survey can be related to the results that would be obtained by a hypothetical complete census?

A. Yes. The mathematical theory of sampling provides such a basis. It is possible from the sample itself to make computations of a sampling error, that is, a range which, when set about the results that would have been obtained from such a hypothetical complete census, will include the sample results with any specified probability.

We can specify a range such that the sample estimate will be included within that distance of the result of the complete census 68 per cent of the time, 95 per cent of the time, 99 per cent of the time, or any other such probability.

Q. Now, let me see if I understand that, what you have been saying.

Is it a fact that the sampling error as you have described [fol. 1371] it, can be ascertained through mathematical procedures?

A. That is right.

Q. Now, would you explain in concrete terms how sampling error, as derived by mathematical procedures, can be applied to relate the results of a probability sampling survey to the results of a complete census?

A. In terms of an illustration, perhaps?

Q. Yes. Suppose you take an illustration.

A. Well, if, for example, one were interested in estimating the average amount of change in the pockets of the people in this room, one could select a probability sample of these people, find out from each of them how much change he had in his pockets, take the average in this particular situation of those amounts of change, use this as an estimate of the average amount of change in the pockets of all the people in this room.

One could from that same data, by mathematical formulas which are available in these textbooks that I have re-

ferred to, compute the range so that, for example, we might be able on the basis of some such computations to state that the average amount of change in the pockets of the people in this room is estimated to be 52 cents, and the chances are 95 out of 100 that this estimate is accurate within 5 cents, say.

Q. And it is your sampling error that permits you to make the last estimate, that your answer ninety-five times out of one hundred is within the range of accuracy?

A. That is correct, and this number is computable from the results of this survey.

Q. To what extent, Dr. Tepping, does the United States Bureau of Census make use of probability sampling in the [fol. 1372] conduct of its surveys?

A. To a very considerable extent. The use of probability sampling in surveys began sometime before 1940 in the Bureau of Census. There has been a very marked growth in the applications of probability sampling at the Bureau of the Census starting with the 1940 census of population and housing.

More use was made of sampling in the 1950 census and even more use is projected, I am told, for the 1960 census.

In addition to the use of sampling directly in connection with the censuses of population, housing and agriculture, as well as business and industry, the Census Bureau conducts periodic surveys, monthly surveys of the population and of retail business.

The survey of the population, which is based on a sample of 335,000 households interviewed each month, provides general population characteristics and also is the basis for the monthly estimates of the size and characteristics of the American labor force.

Q. To your knowledge, do any other Governmental agencies make use of probability sampling in their regular work?

A. Yes, a number of them. Perhaps most prominent are the Department of Agriculture and the Bureau of Labor Statistics in the Department of Labor.

Q. Do the sampling surveys which the Bureau of the Census and the Agriculture Department and the Labor Department conduct utilize the same statistical principles which you have utilized in the survey of du Pont shareholders?

A. This is true for practically all of the surveys conducted by the Census Bureau and for many of the surveys conducted by Agriculture and Labor.

Q. Turning now to the survey itself, Dr. Tepping, you [fol. 1373] have stated the broad objectives that you were asked to accomplish. Were you, in addition, asked, in conducting the survey, to consider the size of the holdings of the individual beneficial owners of du Pont stock?

A. Yes. We were asked to make estimates of the effective tax rates for each of several classes of ownership defined by the number of shares owned.

Q. What were those classes?

A. These classes were owners having one to one hundred shares; 101 to 500—no, 101 to 200 shares; 201 to 500 shares; 501 to 1,000 shares; 1,001 to 5,000 shares; and those holding over 5,000 shares.

Q. So that in all of your work, these separate groupings of stockholders you have just described, were treated on an independent basis, is that correct?

A. That is correct. We have made estimates separately for each of the classes I have just described.

Q. Now, did you state earlier that you did not undertake to conduct a survey of all of the stockholders of the du Pont Company?

A. That is correct.

Q. But certain groups of stockholders were eliminated?

A. That is correct.

Q. Would you state briefly what your instructions were as to which groups of stockholders should not be included in the scope of the survey?

A. We were instructed not to include in the scope of the survey stockholders that were classified in the du Pont records as insurance companies, charitable, educational or fraternal organizations, non-resident aliens and foreign organizations.

Q. And Christiana——

A. And Christiana and Delaware Realty.

Q. And the du Pont Thrift Fund?

A. Yes, the du Pont Thrift Fund.

[fol. 1374] Mr. Gribbon: I ask that this document be marked for identification as du Pont Exhibit 6, which is a

tabulation entitled, "Classification of Record Holders of du Pont Common Stock."

There is a small notation "6."

(Thereupon said document was marked E. I. du Pont de Nemours and Company Exhibit 6 for identification.)

Mr. Reycraft: Is this entirely from du Pont's files or business records?

Mr. Gribbon: I am going to ask that right now.

By Mr. Gribbon:

Q. Would you examine du Pont Exhibit 6, Doctor Tepping?

Mr. Gribbon: Your Honor, I have put in the book here the exhibits which we intend to use today, in the order in which they will come up.

By Mr. Gribbon:

Q. Doctor Tepping, does du Pont Exhibit 6 reflect the information that was provided to you by the du Pont Company at the commencement of this survey?

A. Yes, it does.

Q. Now would you, by reference to du Pont Exhibit 6, indicate the shareholders that were included in the scope of the survey and the totals of those that were excluded from the survey?

A. According to the du Pont records, there would have been 182,165 stockholders of record, who were to be included in the scope of the survey. These constituted 98.07 per cent of all stockholders, and their holdings totaled 30,781,182 shares or 67.50 per cent of all of the outstanding stock of the du Pont Company.

Q. And the 30,781,182 shares are the shares that were [fol. 1375] in the scope of the National Analysts survey?

A. Yes, that is so, according to the tabulation made by the du Pont Company.

Q. And on Line 15 of Exhibit 6 appears the total figures under "Number of Shares" of 14,823,038. Those are the shares of du Pont that were not a part of your survey in any way, is that correct?

A. That is correct.

Mr. Gribbon: I might explain, your Honor, that the reason for excluding the shares indicated on Group 15 was simply that the tax status of the groups of stockholders listed below Line 15 was such that it was exceedingly difficult to ascertain or they were corporations, and, as your Honor will appreciate from the ruling Mr. Dallstream handed up this morning, the tax impact of the distribution of the General Motors stock upon corporations is quite different than the tax impact upon individuals, so that of the shares that were excluded from the survey, in the first place, the charitable, educational and fraternal organizations, paid not tax whatsoever, so there was no point of including those within the survey. The insurance companies, Christiana and Delaware, would be taxable as corporations and they would be required to pay a tax only to the extent of du Pont's basis for its stock rather than on the basis of the fair market value of the stock; and the income tax assessed upon the corporate shareholders, its significance was less than that assessed upon individual stockholders, and we did not feel it worthwhile to conduct a survey with respect to such holders.

In the case of Treasury stock and the Thrift Fund there [fol. 1376] would be no tax, and in the case of foreign stockholders, indicated on Line 18, the problems involved in ascertaining anything with respect to foreign stockholders were such that it was determined that it would not be feasible to include that group within the scope of the survey.

For that reason, the National Analysts were instructed to limit their inquiry to the 30,781,000 shares that represented the stock held of record by those groups of stockholders in Lines 3 through 14 of du Pont exhibit 6.

By Mr. Gribbon:

Q. Doctor Tepping, looking further through Exhibit 6, what were the biggest groups of stockholders of record included within the survey?

A. The largest single group was that of individuals, totaling 13,374,000 shares. The next largest group was that held by banks and nominees, a total of nearly 9,600,000; and the next largest group was that held by trusts, which was nearly 6 million shares.

Q. Did these last two groups, that is, banks and nominees and trusts, present special problems in the conduct of the survey?

A. Yes, they did.

In the case of holders, or owners rather, through banks, nominees and brokers, we did not know the identity of the beneficial owners and it was necessary to enlist the cooperation of banks and brokers to obtain the information required for our tabulations.

Q. Now, as I understand it, your survey did not stop with the stockholders of record. You made an effort to get down to the individual beneficial owner of du Pont stock?

A. That is correct.

Q. Which meant going through the nominees and going [fol. 1377] through the trustees to find out the people who actually paid the tax on the distribution?

A. That is correct.

Q. Would you tell us, as briefly and clearly as you can on this technical subject, how you went about determining which of the shares included within the 30,781,182 in the survey should be selected for the sample that you used? What was the process of selecting the shares from whom you were to elicit information?

A. We first obtained access to a file of punched cards that the du Pont Company had prepared for its own statistical purpose. This was the file, presumably, that gave rise to the figures shown in Exhibit No. 6.

These were punched cards, each card corresponding to a single stockholder of record. It showed the name and address of the stockholder and the number of shares of du Pont stock that he held. It also included codes that specified the size class of his holding. It included codes that specified the classification that had been given by the people in charge of these files, distinguishing between male individuals, female individuals, joint ownerships, banks, brokers, insurance companies, and so forth; and it contained in the form of punched holes in the card the number of shares.

These cards were arranged in that file according to the size code, and according to the classification code.

One of the members of our staff went into those files, picked the groups of cards that were within the scope of

the survey, and, having wired an IBM tabulating machine, calculating machine, called the "604", the cards were fed into this calculating machine and a selection was made essentially of certain shareholders according to a principle that I can go into.

[fol. 1378] Q. What was the principle of selection that was followed in processing these cards, once you had obtained them from the du Pont files?

A. It was essentially that of selecting a sample not of stockholders, but of shares of stock held, so that, for example, for individuals who had one hundred shares or less of record, the selection was of every two thousandth share of stock.

For individuals of record who had between 101 and 1,000 shares, the selection was of every thousandth share.

This was accomplished by appropriately wiring the calculating machine, which acted directly on the punched cards and indicated by an additional punch in the punched cards which ones were selected for the sample.

Q. Do I understand that on the actual selection of cards it was done mechanically rather than manually?

A. That is correct. There is no manual selection involved.

Q. No member of your staff went through the cards and picked out this name as being a likely name?

A. No. The selection was made entirely by my having specified to this member of our staff, the particular share with which he was to start, this being determined by me from a table of random numbers. For example, if he was to select every two thousandth, I took from a table of random numbers some number between one and two thousand and specified that this was the first share, and the machine was then wired to punch a hole in the card corresponding to the holding that contained that particular share and the holding that contained every two thousandth share thereafter for that particular class of cards.

Q. Now, let us look back just a moment to your basis of selection. Can you tell us what the probability of [fol. 1379] selection was for a shareholder of record owning, say, ten shares, and also for a shareholder of record owning 1,500 shares?

A. For an individual of record who held ten shares, the probability of selection is ten over two thousand, or one in

two hundred. That is to say, the probability of selection of that shareholder is one in two hundred.

For the probability of selection of—did you say forty shares?

Q. Take 1,500 shares.

A. 1,500 shares—the probability of selection of an individual having 1,500 shares was unity. That is, he was certain to be selected, since we selected for the sample every individual of record whose holding was more than a thousand shares.

Q. If the result was then that you selected for your sample all holders of more than a thousand shares of record, but only some of the holders of less than a thousand shares of record, why did you adopt that sampling method?

A. This method of sampling was adopted so as to fulfill the requirement that a sufficiently precise estimate be made from the data for certain groups of stockholders, considered separately. Thus we were to have a sufficiently precise estimate for those stockholders who had over a thousand shares.

We were also to have a sufficiently precise estimate for those shareholders who had a hundred shares or less.

Now, the number of stockholders having over a thousand shares—let us say, having 1,000 to 5,000 shares is so small, as compared with the number of shareholders having one to one hundred shares. The sampling there depends much more strongly upon the number of items taken into the sample than it does on the proportion of the items that are taken into the sample.

In order to provide a sufficiently large sample to esti- [fol. 1330] mate for stockholders of 1,000 to 5,000 shares, say, it was necessary to take nearly all, and nothing would have been saved by taking just slightly less, and so we took all. In the case of the smaller stockholders, of course, a sufficiently large sample could be obtained for the purpose by taking a very small proportion of the stockholders that were in the class.

Q. Did the inclusion in your sample of all of the owners of more than a thousand shares and only some of the owners of less than a thousand shares introduce any bias in the results in favor of the tax situation of the larger shareholders, those owning more than a thousand shares?

A. No, it did not. We made these estimates separately for each of these classes. Sample sizes were made sufficiently large to get estimates that were sufficiently precise. In any case, it ought to be noted that the fact that a stockholder of record has more than a thousand shares doesn't necessarily give you a great deal of information about the tax rate to which he would be liable; nor does the fact that an individual has, say, less than a hundred shares give you very much information about what his tax rates were. These things, therefore, had to be treated quite separately.

Q. Did your survey indicate a close correlation between the income tax brackets and the size of holdings of record of the shareholders?

A. We did not compute any coefficients of correlation or any formal measures of such an association.

It is clear from the data that on the average, owners of less than a hundred shares are at a lower effective tax rate than owners of, say, more than 5,000 shares.

[fol. 1381] Q. As a result of the selection process that you have described, how many stockholders of record were initially selected for sampling?

A. The initial selection gave 10,576 stockholders of record.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 7, a tabulation entitled Stockholders of Record Selected for the Sampling.

(Thereupon said document was marked Defendant du Pont Exhibit No. 7 for identification.)

By Mr. Gribbon:

Q. Would you examine du Pont Exhibit 7? Can you tell us if that tabulation was prepared by you or under your supervision?

A. Yes, that was prepared by us.

Q. Does it correctly set forth the distribution of the stockholders of record selected for the sample?

A. Yes, it does.

Q. Would you explain, perhaps by reference to the total line, the significance of these figures that you have tabulated in recording the stockholders of record selected for the sample?

A. The first line of the body of this table shows that 10,576 was the total number of stockholders selected for the sample.

Of these 2,164 held one to one hundred shares; 1,909 held 101 to 200 shares, and so forth.

Q. And all of the stockholders of record that are shown on du Pont Exhibit No. 7 were selected in the manner in which you have described and on the probability basis that you have described?

A. Yes.

Q. Following the selection of stockholders of record to be included, what was the next step in the conduct of the survey?

A. The next step was to prepare, address and mail [fol. 1382] appropriate questionnaires to the various sample stockholder of record.

Q. Did you send the same form of questionnaire to each stockholder of record?

A. No. We had a number of different forms, each one appropriate to the type of stockholder being addressed.

Q. Generally, how did they break down? How were the distinctions in forms reflected? Did you use the same form for individuals and any other group?

A. There was one form which was used to address stockholders who were classified as individuals in the du Pont record.

There was another form that was addressed to holders of record that were classified as trusts. Still another one was sent to banks, nominees and brokers. Still another form was sent to stockholders classified in the record as corporations, other business concerns, and estates.

Q. Now in addition to the questionnaire form were any other instructions or communications sent to the stockholders of record along with those forms?

A. Yes, there were.

Q. What were they?

A. Each of these initial mailings contained a copy of a letter from Mr. Greenewalt, President of the du Pont Company, explaining that this survey was being done at the request of Counsel for du Pont.

Each of them also contained a letter signed by Arnold J. King, President of National Analysts Incorporated,

explaining the purpose of the survey, and giving any special instructions that were necessary in having respondent fill out the questionnaires properly.

Mr. Gribbon: I ask now that there be marked for identification as du Pont Exhibit 8 a printed form letter, dated [fol. 1383] September, 1958, signed "Crawford H. Greenewalt, President," and lacking any addressee

(Thereupon said document was marked Defendant du Pont Exhibit 8, for identification.)

By Mr. Gribbon:

Q. Would you examine du Pont Exhibit No. 8, Doctor Tepping? Is that a copy of the letter from the President of the du Pont Company that was sent to each stockholder of record who received a questionnaire in your sample?

A. Yes, it is.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 9, a printed form letter, signed by Arnold J. King, dated September, 1958, I will ask that that be marked as du Pont Exhibit 9-A, and mark as du Pont Exhibit 9-B, a four-page questionnaire labeled "Questionnaire for individuals, Form No. 1."

(Thereupon said documents were marked, respectively, Defendant du Pont Exhibits 9-A, and 9-B, for identification.)

By Mr. Gribbon:

Q. Would you examine du Pont Exhibits 9-A and 9-B, and tell us if that was the communication that was sent by National Analysts to individual stockholders of record of du Pont?

A. Yes, these are the ones. This is the letter that was sent with the questionnaire to individuals of record, and this is a copy of the form that was sent to such individuals.

Q. Would you look at du Pont Exhibit No. 6, which breaks down the stockholders included in the survey, and tell us to which of the stockholders on that list were [fol. 1384] Exhibits 9-A and -B sent?

A. They were sent to the sample of the stockholders shown on lines 4 through 9 of that exhibit.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibits 10-A and 10-B, respectively, a letter from Arnold King, President of National Analysts, and a four-page questionnaire on a form, entitled, "Questionnaire for Banks, Brokers and Nominees, Form No. 2."

(Thereupon said documents were marked, respectively, Defendant du Pont Exhibits 10-A and 10-B, for identification.)

By Mr. Gribbon:

Q. Would you examine Exhibits 10-A and -B, Doctor Tepping, and tell us if that was the communication that was sent by National Analysts to banks, brokers, and nominees included in the scope of the survey?

A. Yes, these are the documents.

Q. Referring again to du Pont Exhibit No. 6, to which groups of stockholders was Exhibit 10-A and -B directed?

A. To the sample of stockholders shown on line 10, bank and nominees, and on line 12, brokers, of that exhibit.

Mr. Gribbon: I ask that there be marked as du Pont Exhibit 11-A, a letter from Arnold King, dated September, 1958, and as Exhibit 11-B, a four-page questionnaire form, entitled, "Questionnaire for Trusts, Form No. 4"; as Exhibit 11-C, four-page questionnaire, entitled, "Questionnaire for Beneficiaries, Form No. 6"; and as Exhibit 11-D a one-page questionnaire, entitled, "Questionnaire for Fiduciaries, Form No. 7."

(Thereupon said documents were marked, respectively, [fol. 1385] Defendant du Pont Exhibits 11-A, 11-B, 11-C, and 11-D, for identification.)

Q. Will you examine du Pont Exhibit 11-A through 11-D and tell us if the forms contained therein were sent to certain of the stockholders of record selected in your sample?

A. These were the documents, the forms and letters sent to those trusts of record that were selected for the sample.

Q. Were the covering letter and the three forms that are attached as parts of that Exhibit 11 included in one mailing?

A. Yes, they were, in the case of the trusts.

Q. And looking at Exhibit 6, to which of the group of stockholders on that list were forms similar to those in Exhibit 11 sent?

A. They were sent to a sample of the stockholders of record shown on Line 11, trusts; of that exhibit.

Mr. Gribbon: I ask this be marked for identification as du Pont Exhibit 12-A, a one-page printed letter from Arnold King, dated September, 1958, and as 12-B, a three-page questionnaire entitled, "Questionnaire for Corporations and Organizations, Form No. 5."

(Thereupon said documents were marked Defendant du Pont Exhibits 12-A and 12-B for identification.)

By Mr. Gribbon:

Q. Will you examine Exhibit 12-A and 12-B and tell us if these are copies of forms that were sent to certain of the stockholders of du Pont selected in your sample?

A. Yes, they are.

Q. Looking at Exhibit 6, to which group of stockholders on Exhibit 6 was Exhibit 12 directed?

[fol. 1386] A. These were sent to a sample of the stockholders of record shown on Line 13, the estates, and Line 14, other corporations and organizations, excluding Lines 16 to 22.

Q. Now, just to make it clear in the record, Doctor Tepping, you have identified as Exhibit 8, which is a letter from the president of the du Pont Company——

A. Yes.

Q. Was that letter included in all of the mailings made to all stockholders of record?

A. Yes, it was.

Q. Did you participate in the preparation of the questionnaire forms that have been identified as parts of Exhibits 9 through 12?

A. Yes.

Q. Do the questions in the form ask for any statements of opinion by the respondents?

A. No, they do not.

Q. What kinds of information were the questions included in these forms designed to elicit from those stockholders selected for the sample?

A. The information required was of two general kinds.

First, information required to classify the stockholder, what we might call a screening form.

The second kind of information was designed to elicit data from his 1957 income tax return, to provide a basis for computing a tax on additional distribution of income to him.

Q. So that basically the questionnaire was designed for two purposes, one, to get further information as to the status of the shareholder, and, second, in some instances to find out tax information from him?

A. That is correct.

Q. Will you refer to the questionnaire which has been marked as Exhibit 9-B, the questionnaire for individuals, and explain to us first by reference to the questions contained thereon how they were intended to elicit the first [fol. 1387] type of information you have described?

A. Question No. 1 is designed to find out whether the addressee held all of the shares in question for his own account, or whether he held some of them for himself and some for others, or whether he held some in some other way.

If he responded that he held them some other way he was instructed by the questionnaire itself to skip to Question 8, and give us further information about the way in which he did hold that stock.

Q. Now, then, will you tell us, beginning with Question 2, the kind of tax information that was elicited from the beneficial owner by this questionnaire?

A. In Question No. 2 we first found out whether he in fact did file a Form 1040, some other form, or no form at all. Then in Question 3 we determined whether it was a joint return, an individual return, or a head of household return.

In Questions 4 through 7, we asked him to copy certain information from the income tax return he had filed in 1957.

These included the entries that he had made in Line 12 of Page 1 of that form, the entries on Lines 13-A and B of Page 1; the entries on Lines 8-A and 8-B of Page 2; a question 5-B in which he was to tell us if he had claimed as foreign tax credit the full amount of tax that he had paid in foreign countries or U. S. possessions.

In Question 6 we asked him for dividends, and dividend exclusions reported in Schedule A of Page 3 of Form 1040.

Question 7, we asked him for the tax that he had entered on Line 15 of Page 1 of Schedule D.

Q. Did any of the questions on the form, or any of the other form, ask the respondent to make any computations?

A. No, they did not. He was asked merely to state what was answered on his 1957 income tax return.

[fol. 1388] Q. So the filling out of the questionnaire was merely a job of transcribing information from his 1957 return to this form?

A. Yes.

Q. And did you ask any of the respondents to speculate as to changes in their income situation?

A. No.

Q. Did you consider in making this survey whether this tax information you desired might be obtained merely by asking the recipient to compute the additional tax that would have been payable in the event of a receipt by him of a certain number of General Motors shares?

A. Yes, we did consider that.

Q. Did you reject that suggestion?

A. We rejected it on the grounds that, in the first place, we felt that the errors made by such a widely scattered group of computers would affect our results adversely from the point of view of total error.

In the second place, we felt that we would get a better response—in fact, we more than felt, we have had experience in this kind of thing—that the less we ask the respondent to do, the more likely it is that he will respond.

Q. Will you turn now to the questionnaire for banks, brokers and nominees, Form No. 2, which is Exhibit 10-B.

A. Yes.

Q. What was the purpose of Form No. 2, which has been identified as du Pont Exhibit 10-B?

A. This questionnaire can be regarded as having two parts, of which the first is a screening form, designed to determine whether this bank, broker, or nominee or business concern, whatever it actually turned out to be, held the shares for its own account or for some other—someone else's whether the someone else's were individuals and——

Q. Is this the form by which you attempted to get be-
[fol. 1389] hind the record holdings and find out who the beneficiary or owner of the stock was?

A. That is correct. The second part of the form is essentially a list of the accounts for whom this bank, broker or nominee held shares of du Pont stock.

Q. Now, was the bank, broker or nominee asked to give you any tax information on Form No. 2?

A. No. He was simply asked to list the accounts for whom he held shares of du Pont stock, identifying those by a code known only to him, and showing for each one the number of shares of du Pont stock held.

Q. Well, upon receipt of executed Form No. 2 from banks, brokers or nominees, what was the next step in the conduct of the survey with respect to those shares?

A. We selected a sample of these shares in essentially the same way, by essentially the same procedures as were used for the initial selection of individuals of record.

The actual procedure was to prepare a punched card for each of these accounts showing the number of shares in that account and passing these through an IBM calculating machine which selected a sample of those accounts.

We then sent another form to the holder of record for the selected accounts asking for additional information about those accounts.

Q. So, in essence, you created what might be called a sub-sample of those shares that are held in the names of banks, brokers and nominees?

A. That is correct.

Q. And then do I understand that you sent another questionnaire out to banks, brokers and nominees in an effort to get information from the beneficial owners of those shares?

A. That is correct.

[fol. 1390] Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 13-A and 13-B respectively a two-page letter from Arnold King and a questionnaire form labeled, "Form No. 3," and entitled, "Beneficial Account Questionnaire for Banks, Brokers and Nominees."

(Thereupon said exhibits were marked defendant du Pont Exhibits 13-A and 13-B for identification.)

By Mr. Gribbon:

Q. Will you examine du Pont Exhibit 13-A and B and state whether this is the communication that was sent in the second mailing to banks, brokers and nominees?

A. Yes, these are the materials.

Q. And this was the communication that was aimed at getting to the beneficial owner of the shares held of record by nominees?

A. Yes. There was an additional form sent along with those.

Q. What form was that, Doctor Tepping?

A. That was Form No. 6, which has already been identified as Exhibit 11-C.

Q. One of the forms that was sent to trustees?

A. Yes.

Q. Now, to what extent in the conduct of your survey were you able to get cooperation from banks, brokers and nominees in going behind the record holdings to the beneficial holding?

A. I should say that they were extremely cooperative.

Q. Were you in communication with such nominees in instructing them how to go about contacting the individuals involved?

A. Yes. In addition to the printed materials, which have already been introduced, we frequently had telephone calls [fol. 1391] from them; on occasion members of our staff visited their offices to assist them in understanding the procedures that were involved, and we had letters from them also asking further questions, asking for more materials, and so forth.

Q. To what extent were you able to ascertain the number of beneficial owners of the shares held of record in the names of banks, brokers and nominees?

A. This information was, of course, not known in advance of the survey. It was only known how many shares were held by each holder of record, but not how many beneficial owners that represented.

Our procedure was to send along with Form No. 3, Exhibit 13-B, a supply of blank copies of Form No. 6, which was identified as——

Q. 11-C.

A. 11-C. We sent along a number of blank copies and an

extra supply and asked the bank or broker or nominee to request additional copies if he had any use for them.

Q. So that in your survey you never were able to get an exact count of the beneficial owners of the shares held by brokers and nominees?

A. No. We know from how many we have received responses, but not how many there might have been in total.

Q. What procedures were followed when a questionnaire was returned by, say, an individual or a trust, and the screening question disclosed that the owner was a different type of owner than the holder of record?

A. In such a case we merely proceeded to send the respondent an appropriate form for eliciting the information that we needed.

[fol 1392] Q. What period of time elapsed between the initial mailing to the stockholders of record and the tabulation of responses that subsequently took place?

A. Our initial mailing on the main sample—I might mention that there was a pilot study conducted early in the summer.

Q. This was the summer of 1958?

A. Early in the summer of 1958; but the first mailing on the main study was begun on September 3, 1958 and receipts were closed for the purpose of making tabulations on the 26th of December, 1958.

Q. Upon receipt of the executed forms, what steps were taken to check the accuracy of the tax information supplied therein?

A. The forms were reviewed by clerks who were given certain instructions as to what to look for. The errors of omission or apparent inconsistency were—we attempted to resolve such by correspondence with the respondent.

The returns in any particular case were not included in the further processes until such time as questions of this kind had been resolved.

Q. Did you receive some questionnaires which, for one reason or another, you found could not be used in your tabulations?

A. Yes, we did.

Q. Approximately how many?

A. Oh, I should say several hundred.

Q. How many responses from beneficial owners of du Pont stock did you include in your final tabulation?

A. The final tabulation upon which our estimates were based included responses from 14,823 respondents.

Q. Now, I believe you testified, and your du Pont Exhibit 7 shows, that there were 10,576 stockholders of record selected for the sample. Now, that was not the total number of mailings, was it?

A. I beg your pardon? Would you repeat that?

[fol. 1393] Q. Would you refer to your du Pont Exhibit 7, which shows that there were 10,576 stockholders of record selected for the sample.

Was that the total number of questionnaires that were sent out to individual owners?

A. No. This was the total number of questionnaires that were sent out at the first mailing. Some of these were individuals of record, some were Form No. 2 to banks, and so forth.

The total number of responses that we received includes responses from individuals to whom we had sent the initial inquiry on the Form No. 1, for example. It also includes people holding shares of du Pont stock through banks and brokers where we had sent inquiry to the bank and broker, and we may have received several different responses from several accounts or from perhaps more than one owner of a single account.

Q. But the total number of all responses that were sufficiently complete to be included in your tabulation was the figure of 14,823?

A. That is correct.

Mr. Gribbon: I ask that there be marked as du Pont Exhibit 14 a tabulation headed, "Number of Responses Tabulated."

(Thereupon said document was marked Defendant du Pont Exhibit 14, for identification.)

By Mr. Gribbon:

Q. Doctor Tepping, did you prepare the figures contained in du Pont Exhibit 14?

A. Yes, I did.

Q. Does Exhibit 14 correctly set forth the total number of responses included in the tabulation and the distribution of those responses among the various groups of stockholders?

A. Yes, it does.

[fol. 1394] Q. Would you explain by reference to the figures there briefly just how the responses were tabulated among the various groups of stock holdings?

A. This table shows that out of the 14,823 responses that we received there were 6,324 from persons who were not beneficiaries of trusts; that there were 3,087 from beneficiaries of trusts, and so forth, 323 from trust corporations who retained some income from the corpus of the trust in 1957.

It shows moreover that for persons not beneficiaries of trusts, of the 6,324 from whom responses were received, there were 1,458 who owned one to one hundred shares of stock, and so forth.

Q. Can you tell us how the number of responses which you received, and which are tabulated in Exhibit 14, compares with the number of responses that you might have received if all of the recipients of your questionnaires had answered?

A. No, I can not.

Q. Why not?

A. Well, for the reason that I mentioned before, that we do not know from how many beneficial owners through fiduciaries we did not receive a response from. The identity of such beneficiaries was not known to us. The distribution of the appropriate forms was made by the fiduciary.

We can only know from how many beneficiaries we received a response and not from how many we might have received a response if everybody had responded.

Q. Now, Dr. Tepping, will you examine Exhibit 14 and Exhibit 6. Would you agree that the proportion of responses received from the larger shareholders was somewhat higher than the proportion of responses received from the shareholders in the smaller groups?

[fol. 1395] A. Yes, certainly. It is not possible, of course, to make a direct comparison of these two tables, because Exhibit 6 shows the distribution of stockholders of record,

whereas, Exhibit 14 is the distribution of responses received, but it is——

Q. Compare your 1 to 100 shares. That shows you had 1458 responses, is that correct?

A. Yes.

Q. And there were 147,225 individuals of record holding 1 to 100 shares?

A. That is true. It should be remembered, of course, that not all of those 1458 responses were from individuals of record who had 1 to 100 shares.

Some of them may have been from individuals who had higher holdings, that is, individuals of record who had higher holdings where these people were part owners of that stock.

Some of them may have been obtained through accounts of banks and brokers. Similarly, for the higher classes, this tabulation shows that there were 161 responses from persons not beneficiaries of trusts who had over 5,000 shares, but these 161 were not all individuals of record with over 5,000 shares.

Some of these were account holders through banks.

Q. But it is a fact, is it not, that a somewhat higher rate of response was received from the shareholders in the higher share groups than shareholders in the lower group?

A. That is true. I was just pointing out it can't be inferred directly there from a comparison of these tables.

Q. Now, how does the fact that there was a somewhat higher rate of response from the higher share groups than the lower share groups affect the validity of your survey and of the estimates that you have made?

A. It does not in any way affect the validity of those [fol. 1396] estimates. The magnitude of sampling errors is affected in a way which is reflected by our estimates of those sampling errors.

Q. Well, could I translate that into saying that whatever effect it has upon your results, it shows up in the sampling error which you estimate?

A. That is what I meant to be saying.

Q. Does the fact that you had, say, an 80 per cent response from shareholders owning over 5,000 shares introduce any bias whatsoever into your estimate of the tax for

those shareholders owning between 1 and 100 shares, where the rate of response might have been 10 or 15 per cent?

A. No, it doesn't.

These two classes were treated quite separately.

Q. Now turning to the computation of tax, based upon the survey results, what procedures were followed in taking the information which was obtained on the 14,823 responses shown in Exhibit 14, and determining in accordance with your assignment the additional tax that would be payable by individual beneficial owners of du Pont stock in the event of a distribution of General Motors stock? What was the first step, after receiving the responses and checking their accuracy?

A. The first step in the actual processing of this data was to transcribe from the questionnaires to a punched IBM card the information contained in those questionnaires.

This is essentially a transcription operation by an operator sitting before a card punching machine.

This operation was also verified by having it done again on a special machine designed for that purpose.

Q. Was such an input card prepared for every response you received?

A. There was such a card for every response that we received.

[fol. 1397]. Q. Following the preparation of such an input card, you were going to say the next step——

A. The next step was to construct a program of instructions for an electronic computer, the IBM type 650 Computer.

These instructions specified in detail the way in which the computations should be made, the organization of those computations, the kinds of numbers that were to be the end result of the computation.

We then fed these input cards into the computer, the program having already been specified to the computer.

Q. What precisely were the end computations which you directed the computer to perform?

A. In outline, the sequence of computational steps was first to reconstruct the 1957 income tax return for the respondent whose data was being handled; to determine on the basis of this reconstructed Form 1040 the additional

tax that would be payable upon this taxpayer having a certain amount of additional dividend income in 1957; the computer was then asked to spell out on the output card certain information that it had computed in the process performing these steps.

Would you like me to specify what some of these were?

Q. Yes.

A. Well, first of all, the additional tax that would be payable upon an additional income at four different levels——

Q. What do you mean by "four different levels"?

A. We computed this additional income on the assumption that there is an additional income of $2 for every share of du Pont stock owned by this holder, if there were an income of $3.70 for each share of du Pont stock, an income of $5.40 for each share of du Pont stock, and an income of $7.00 for each share of du Pont stock owned by that holder.

[fol. 1398] Q. So that your computations were made on four quite separate assumptions?

A. Yes.

Q. Let us leave those assumptions for a moment,—we will come back to them—but let us carry on with the computations which the computer was directed to perform to put you in a position to put that on the output card.

A. For each of these assumptions, the computer was programmed to write out the additional income tax that would be payable by him; to write out a number which is the total tax represented by this respondent, as a sample of a group of respondents; to write out the number of shares that this respondent owned and the number of shares represented by this respondent as a sample respondent; and other information of this kind.

Q. And these end computations are tabulated on what you call an output card?

A. The output—that is, the result of the 650 operation is an output card, a punched IBM card, which contains the answers that the computer had arrived at.

Q. Now, in describing the computations, you have mentioned the shares represented by each of these responses and the number of holders represented by each response.

That is a different figure than the actual holding of that respondent, is it not?

A. That is correct.

Q. Would you tell us how this representative figure was arrived at and what its significance is in your survey?

A. For example, if in the course of selecting every two thousandth share of a stockholder of record having one to one hundred shares, we had selected a share held by someone who had forty shares, this would mean that the stockholder of record had been selected with a probability of forty over two thousand, or one in fifty.

The share that was selected represented two thousand [fol. 1399] shares; the stockholder selected represented fifty stockholders.

Q. And the two thousand shares is then the number of shares represented by this shareholder who actually only holds forty shares?

A. That is correct.

Q. And how is the tax payable, the additional tax payable by the shares represented computed?

A. Essentially, it is computed by determining what the tax is on the sample share. The sample share in this particular illustration represented 2,000 shares; the total tax then is 2,000 times the computed tax for that share—not the tax for the shareholder, but the tax for that share—which in this particular case would be one-fortieth of the additional tax payable by that owner.

Q. So that at the end of the computations, each of your output cards contained a figure which represented the total additional tax that would be payable upon a distribution to the shares represented by that respondent?

A. That is correct.

Q. By the way, Doctor Tepping, how did you compute the additional tax that would be payable by individuals who were beneficiaries of trusts, inasmuch as they were not the direct owners of stock?

A. The computation was made as if they owned shares of du Pont which corresponded to their share in the income of that trust in 1957. That is, if the trust itself had, say, a thousand shares, and if the particular respondent received 50 per cent of the income of that trust in 1957, we would,

for the purpose of this computation, credit him with 50 per cent of the shares held by that trust.

Q. In other words, you assume that the same distri- [fol. 1400] bution of trust income would take place on a distribution as actually took place in 1957?

A. Yes.

Q. And made no allowance for such changes in the distribution that the trustee might be empowered to do?

A. That is correct. Our final tabulations are on this basis.

Q. Did you attempt to work out any computations that would take into account a different distribution of trust income than was made in 1957?

A. Initially we intended to make this computation on three different bases.

First, the basis which has just been mentioned. The second basis was the assumption that the trust would retain all additional income that corresponded to the distribution of General Motors stock.

A third possible basis upon which we contemplated making computations was the assumption that—I have forgotten which ones I mentioned.

One assumption was that the trust would retain all of the income. I guess that is the one I haven't mentioned. That it would retain all of the income. Another, that they would distribute income as they did in 1937; and a third, that they would distribute all income, retaining nothing for the corpus of the trust.

Q. Were you successful in making those two additional computations?

A. We were unable to make the two additional computations. This was a result of the fact that such a large proportion of the trusts paid no income tax in 1957, having no residual income upon which to pay a tax.

If an entity had paid a tax in 1957, it was possible for us [fol. 1401] to compute the tax that would become payable upon an increase in that income. But if an entity had paid no tax in 1957, it wasn't possible for us to determine how much tax they would pay if they did have income because, in fact, they may, for example, have operated at a loss in 1957.

Q. So that you concluded to confine yourself to the assumption that the income if distributed would be dis-

tributed on the same basis as it had been distributed in 1957?

A. Right.

Q. Now, having made the computations and transferred the result to the output cards, what mechanical steps were involved in your final computation of the additional tax that would be due under the assumptions that you have mentioned?

A. These output cards were properly sorted and put through standard tabulating equipment to provide the tables that we needed to get, and in some cases some additional hand computation had to be done. Mainly, this was computing percentages of total figures that were provided by the tabulating machines.

Q. Basically, it was a question of adding up the figures for the additional tax on represented share holdings which came out of the computation?

A. That is right.

Q. Now, back to your computation, you said that you used four different assumptions in computing the additional tax that would be payable by the du Pont shareholders.

Those assumptions, I believe, were that an amount of $2 would be added to the 1957 income; an amount of $3.70 would be added to the 1957 income; an amount of $5.40 and an amount of $7 would be added to the 1957 income of the du Pont shareholders?

A. For each share of du Pont stock owned by the shareholders.

Q. That is per share of du Pont stock?

A. Yes.

Q. Now, tell us, Dr. Tepping, on what basis did you de- [fol. 1402] rive these assumptions which have been used in your computations?

A. These particular numbers were chosen to represent a wide range of possible incomes that would come about as a result of General Motors stock distribution.

For example, the figure of $5.40 of income per share of du Pont stock is equivalent to a distribution over a period of ten years of the General Motors stock on the assumption that the market value of the General Motors stock is $39.40 per share.

The figure of $3.70 is equivalent for a 10-year distribution to $26.86. But if you assume a 20-year distribution, then that same figure of $3.70 is equivalent then to a market value of General Motors of $53.72.

Q. Is it correct to say that you selected these figures ranging from $2 per share of du Pont per year to $7 per share to cover a broad range of possible amounts of income that could be added to the income of the du Pont shareholders?

A. In terms of possible values of the General Motors market price and possible plans of different distribution over various periods of years.

No particular significance is to be attached to any particular one of these numbers. We can, from the data we now have, obtain the tax that would become payable for an equivalent price that is anywhere, really, within this range of $2 to $7.

Q. As I understand it, mathematically it is quite simple to develop additional computations for any figure between $2 and $7?

A. That is right.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 15, a schedule headed at the top, [fol. 1403] "Assumed Additional Income to du Pont Stockholders."

(Thereupon said document was marked defendant du Pont Exhibit 15, for identification.)

By Mr. Gribbon:

Q. Would you examine Exhibit 15, Doctor Tepping and tell us if this was prepared by you?

A. Yes, it was.

Q. Does Exhibit 15 illustrate some of the possible combinations of market value of GM and periods of distribution that were taken into account in determining the assumed additional income to du Pont shareholders?

A. Yes, it does.

Q. It is not exclusive, as I understand it? There are other variations?

A. Many others.

Q. Now, du Pont Exhibit 6 reflects that there were 30,781,182 shares of du Pont stock included within the scope of your survey. Those shares were owned by some 182,000 separate stockholders of record.

How many of such shares and holders are represented by the responses as shown in Exhibit 14 that you have tabulated?

A. The responses that we received represented 20,553,000 shares.

Q. How many beneficial owners are represented by those responses?

A. These represented 171,282 owners.

Q. How does that figure of 171,282 owners—can it be compared with the shareholders of record of 182,000 as shown on Exhibit 6?

A. No. Many of these 171,282 owners are not shareholders of record, but are partners of shareholders of record or beneficial owners through nominees or beneficiaries of trusts, and so forth.

[fol 1404] Q. Now, Doctor Tepping, in saying that you received responses representing 20,553,000 shares and representing 171,282 beneficial owners, you are not saying, are you, that you actually received responses from that many owners?

A. No. We received responses from the number of owners shown on Exhibit 14.

Q. How do you derive the figure of 20,553,000 shares which you say are covered by responses to the survey?

A. By adding together the number of shares represented by the sample responses that we received.

Q. So that the 20,553,000 shares represents the total of the represented shares shown on each of the output cards that you have described?

A. That is correct.

Q. Have you prepared a tabulation which estimates the distribution of the shares and owners that are represented by the survey responses in terms of type of owner and size of holding?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 16 a tabulation entitled, "Estimated Beneficial Ownership of du Pont Common Stock

Represented by Survey Responses, by Type of Owner and Number of Shares."

(Thereupon said document was marked defendant du Pont Exhibit 16 for identification.)

By Mr. Gribbon:

Q. Would you examine du Pont Exhibit 16, and tell us if this represents your estimate of the distribution of the beneficial owners of du Pont stock represented by survey responses?

A. Yes, it does.

Q. Was this estimate prepared by you, Doctor Tepping?

A. Yes, it was.

[fol. 1405] Q. Is it based upon the results of the survey that has been conducted in the manner you have described here this morning?

A. Yes.

Q. Would you examine Exhibit 16 and tell us what it represents in terms of some of the major types of owners of du Pont stock which you estimated?

A. It shows, for example, that of the total of 20,553,000 shares included here, 10,664,000 shares were owned by individuals——

Mr. Andrews: Your Honor, before the witness gives testimony based on this exhibit, we have an objection to be made to this exhibit when it is offered, and we do not think he should be describing or testifying from it until it is offered in evidence.

Are you planning to offer it?

Mr. Gribbon: Your Honor, I had contemplated holding up offering all of these exhibits until the conclusion of the witness' testimony.

The Court: I think that is the better practice. Offer them all together, and then I will hear the objections.

Mr. Gribbon: Will you read the question, please?

(Question read.)

By the Witness:

A. It shows that of the 20,553,000 shares included here, that 10,664,000 shares were owned by individuals other than trust beneficiaries;

That 5,866,000 were owned by individuals who were trust beneficiaries;

That 1,145,000 were owned by tax-liable corporations that were within the scope of the survey, and so forth.

It shows, moreover, how for individuals and individual trust beneficiaries they are distributed by number of shares owned. So that, for example, it shows that 2,811,000 shares [fol 1406] were owned by individuals not trust beneficiaries who had 1 to 100 shares.

Q. Now, Doctor Tepping, were you instructed to estimate the additional effective tax rate for all of the shares shown on Exhibit 16 as involved in your estimated beneficial ownership of stock represented by the survey response?

A. No.

Q. Were there categories of shareholdings that you did not make any tax estimate for?

A. Yes, there are. We made no estimate for tax-liable corporations, for charitable, educational and fraternal organizations, for nonresident aliens and foreign organizations, for estates, for common and mutual funds, for other organizations.

We did not make estimates of the tax for trust corpora.

We did not make estimates for individual owners who paid no tax in 1957, nor did we make estimates for individual owners who filed Form 1040-A in 1957, rather than Form 1040.

Q. Why did you fail to make an estimate for those shareholders who were shown to have paid no tax or to have filed their tax on Form 1040-A, the so-called short form?

A. In the case of those people who paid no tax in 1957, it was not possible for us to estimate the tax that would become payable if they had had additional income, since it was not known to what extent they had losses.

In the case of persons who filed Form 1040-A, the in-

formation elicited was, of course, not sufficient to permit the computation of such a tax.

We felt that the additional questions that would have been necessary to elicit the information required actually to compute such a tax would markedly have reduced the [fol. 1407] response rate from all owners in general, and the additional information we would thus gain was not worth the risk of reducing the response rate.

Q. So the net effect was that a tax has not been estimated for some people whom your estimate showed to be individual beneficial owners of du Pont stock?

A. That is correct.

Q. Have you prepared an estimate on the basis of your sample survey, and in accordance with the assumptions you have stated, of the additional tax that would be payable annually by individual beneficial owners of du Pont represented by survey responses in the event of a distribution of some part of the General Motors stock owned by du Pont?

A. Yes, I have.

Q. And the assumptions you have made with respect to the value of the distribution of General Motors stock are those that you have already described?

A. Yes, $2 per share of du Pont, $3.70 per share of du Pont, $5.40 per share of du Pont, and $7 per share of du Pont.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 17, a tabulation entitled, "Estimated Additional Income Taxes that would be payable annually upon a distribution of General Motors stock by individual beneficial owners of du Pont stock represented by survey responses."

(Thereupon said document was marked defendant du Pont Exhibit 17 for identification.)

By Mr. Gribbon:

Q. Was du Pont Exhibit 17 prepared by you, Doctor Tepping?

A. Yes, it was.

[fol. 1408] Q. Does it represent your estimate of the additional income taxes that would be payable under the as-

sumptions that you have stated by the du Pont stockholders covered by responses to your survey?

A. Represented by survey responses, yes.

Q. Represented by survey responses?

A. Yes, it does.

Q. Would you refer to the first line of Exhibit 17 which is entitled, "Total Individuals" and explain to us the import of the figures on that line?

A. This shows that an estimate of 117,928 owners for whom it was possible to make an estimate of the tax, that these owned 16,172,000 shares.

It then shows the tax rate and the tax in thousands of dollars for the additional income, on the basis of these four levels that we have referred to. So that, for example——

Q. Specifically, take the column headed, $5.40. What assumptions would reflect an additional payment to du Pont shareholders of $5.40 a share in one year?

A. This would correspond to the assumption that the distribution of General Motors stock is made over a ten year period, and that the market value of General Motors stock is $39.20.

Q. Right. Now, would you interpret the figures in that column for us?

A. Under those conditions, the estimate is that the effective tax rate on the additional income from the General Motors stock would be 57.9 per cent, and that the total tax payable by such individuals as we are discussing would be $50,528,000 per year.

Q. That $50,528,000 represents the tax payable in one year?

A. That is correct.

Q. You have two sub-categories on Exhibit 17. Would you explain briefly those sub-categories?

A. Total individuals for this purpose are comprised of [fol. 1409] individuals who are not trust beneficiaries and individuals who are trust beneficiaries. We have shown data of the same kind for each of these sub-classifications, and in all three cases by number of shares owned.

Q. Doctor Tepping, the figures on Exhibit 17 are not related to share holdings of record in any way, are they?

A. No. These represent our estimates of the number of owners, number of shares, tax rate, and the total tax that

would become payable by individuals who are trust beneficiaries, individuals who are not trust beneficiaries, as it depends upon the number of shares of which those individuals are the beneficial owners.

Q. Do you know how many shares of du Pont stock represented by your survey responses reported no income or filed their return on the Form 1040-A, so that you were unable to include any possible tax payable with respect to those shares in Exhibit 17?

A. You are asking for—yes.

Q. If you don't have that handy——

A. They represented approximately—I don't seem to have that figure here, but they represented approximately 300,000 shares. It is between 300,000 and 350,000 shares.

Q. Now, looking at Exhibit 16, you have indicated that you did not estimate the income taxes that would be payable on a distribution with respect to any of the shares represented in the last seven categories of stock holdings, is that correct?

A. Yes.

Q. To the extent that any such distribution would be taxed to individuals, that would go to increase the figures that you have estimated on Exhibit 17, would it not?

A. Yes.

[fol. 1410] Q. Have you prepared a tabulation which takes the 16,172,000 shares covered in Exhibit 17 and discloses the rates at which you estimate the distribution of General Motors stock would be taxed to the various owners of such shares?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 18, a tabulation entitled, "Estimated Number of Shares of du Pont stock Whose Beneficial Owners are Individuals represented by Survey Responses, by Effective Income Tax Rate."

(Thereupon said document was marked Defendant du Pont Exhibit No. 18, for identification.)

By Mr. Gribbon:

Q. Is Exhibit 18 the tabulation that you have just described?

A. Yes, it is.

Q. Was it prepared by you?

A. Yes.

Q. Does it correctly reflect your estimate of the breakdown of the tax rates that would be payable on distribution with respect to the various classes of du Pont shares?

A. Yes.

Q. Would you take Exhibit 18 and explain to us what those figures in the two right-hand columns mean?

A. In the first place, this is concerned with the 16,472,000 that are shown, as represented by responses, in Exhibit 17. These are broken down by the effective income tax rate, that is to say, the ratio of the additional tax to the value. The value of this additional income is at the $5.40 level; that is, it is equivalent to a 10-year distribution of General Motors stock at a market value of $39.20 per share.

It shows then an estimate of two-tenths per cent of the [fol. 1411] shares for which no tax would be paid; 7.4 per cent of the shares for which a tax would be paid, but less than 20 per cent; 10.9 per cent of the shares for which a tax of 20 to 29 per cent would be paid; and so forth, down to the end where it shows that there are 31.4 per cent of the shares for which the effective income tax rate would be 80 per cent or greater.

Q. Now, Doctor Tepping, is it correct to say that the estimates which you have made and which are reflected in Exhibits 16, 17 and 18, can be proven by a procedure of developing the sampling error that was made in arriving at such estimates?

A. Yes.

Q. Could you explain to us how the sampling error for your estimates is arrived at? I don't mean to go through the formula but——

A. Yes. It is derived on the basis of well-established mathematical statistical principles, which are specialized to the particular structure of the sample included in this survey. From the formulas thus set down, one can compute from sample results themselves estimates of the sampling error of the tax rates, the tax, the number of shares, the number of owners.

Q. Have you set forth the procedures that are necessary in determining the sampling error involved in your estimates?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 19 a document consisting in total of fifteen pages, which includes three appendices. The document is entitled, "Design of the Sample for the Survey of du Pont Stockholders."

(Thereupon said document was marked Defendant du Pont Exhibit 19, for identification.)

[fol. 1412] The Court: The Court will now recess.

(Thereupon a recess was taken in the trial of the above-entitled cause until 2:00 o'clock p.m. of the same day, Monday, March 16, 1959.)

[fol. 1413] Before Hon. Walter J. LaBuy, Monday, March 16, 1959, 2:00 o'clock p.m.

Proceedings resumed pursuant to recess.
Present: Same as before.
The Court: Counsel may proceed.
Mr. Gribbon: We will call Doctor Tepping.

BENJAMIN TEPPING, a witness called on behalf of the defendant, E. I. du Pont de Nemours and Company, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination:—(Continued)

By Mr. Gribbon:

Q. Just before the noon recess, Doctor Tepping, you had begun to discuss the question of sampling error. Before we move into that area, would you explain whether there are any other limitations in addition to sampling error on the validity of the estimates that are set forth in Exhibits 16, 17 and 18?

A. There are two other varieties of limitations. One of them can be characterized as processing errors of the kind to which I have referred earlier, namely that these errors

.re made by clerks in the course of processing the data—arithmetic errors, errors of misclassification, and so forth.

[fol. 1414] Q. What steps did you take to minimize such errors?

A. We exercised the greatest possible care that we could in terms of supervision, of verification of the work, to minimize the incidence and the impact of such errors.

In my judgment the amount of errors of this kind remaining in the data are so small as to be negligible.

Q. Now, you referred to a second type of error that might impose a limitation on the validity of the estimate.

A. A second type of limitation is what I might call computational limitations. These are errors which come about because we did not get the last possible bit of information regarding the 1957 tax returns from the respondents and, therefore, certain special cases are in effect ignored.

Q. What are some examples of the computational limitations contained in the study?

A. Perhaps the one of greatest effect has to do with the way in which our computation treated dividend exclusions. The dividend exclusion is $50 for a single return, $100 for a joint return, that is, up to $50 or a hundred dollars in these two cases, or the amount of the dividend, whichever is less.

Now, in some cases if, for example, a response involved a joint return but only $50 dividend exclusion had been claimed we in our computation allowed up to $100, or the amount of the dividend, even though some of these cases may have been ones in which only a dividend exclusion of $50 would be allowable even with the additional income.

Q. Well, what effect did the procedure you followed on dividend exclusion have on your estimates?

A. This has the effect of course, of underestimating the total tax, since we allow perhaps a bigger exclusion from the income than we need have,

[fol. 1415] Q. Now, were there any other prominent examples of computational limitations?

A. Another example of computational limitation has to do with multiple ownership in the sense that a person may own shares of du Pont stock through more than one avenue. He may own stock directly as a stockholder of record, and also own stock through a nominee, for example, or a broker.

At the same time he may also be the beneficiary of a trust. Now, our estimates treat each response as if it referred to a seperate individual.

This has the effect also of underestimating the tax, since there is a possibility at least that if the various holdings of a particular individual were added together, it might in some cases have put him into a higher income tax bracket and, therefore, raised the effective tax rate on his additional income.

Q. But your estimate took no account of the possibility of multiple owners?

A. It did not. It treated each response as if it were a separate owner.

Q. Now, what briefly were the types of other computational limitations on the validity of the study?

A. The other computational limitations had to do with the treatment of credits and exclusions of various types—retirement income credit, for example, was assumed in these computations not to be increased as the result of additional income.

Computational limitations also had to do with capital loss carryover, which was not taken account of.

Q. And is that also true of certain deductions, such as charitable deductions and——

A. It certainly does. Medical deductions were not assumed to be increased. Charitable deductions were not assumed to be increased. That is, the allowable medical and [fol. 1416] charitable deductions were not assumed to be increased as the result of additional income.

All the other computational limitations were of this character.

Q. In your opinion, what has been the net effect, in terms of significance, with respect to the final figures you arrived at of these computational limitations?

A. Very small.

Q. Now, was there not also—is there not also a limitation derived from the possibility of error in the transmission of information by the respondent from his 1957 tax return to the questionnaire form?

A. There certainly is.

Q. What steps did you take to minimize that possibility of error?

A. As was mentioned earlier, each response upon being received was reviewed for consistency. Now, we had in fact included among the questions in the questionnaire some items which could be computed from other items asked for. This is specifically the case with dividend received credit, so that we were able to see the extent to which the data reported by the respondent was consistent in that the computed figure for dividend received credit was the same as the reported figure for dividend received credit.

Other checks of consistency were also possible.

Q. Now, Doctor Tepping, just prior to the recess we had marked for identification du Pont Exhibit 19. Was du Pont Exhibit 19 prepared by you?

A. Yes, it was.

Q. Does it set forth the mathematical procedures by which you have ascertained the sampling error in your estimates?

A. Yes, it does.

Q. Does Exhibit 17 also set forth a more precise and detailed description of the procedures followed in design-
[fol. 1417] ing the sample and in carrying out the survey?

A. Exhibit 19?

Q. 19, yes.

A. Yes, it does.

Q. This exhibit in its entirety was prepared by you?

A. Yes, it was.

Q. Now have you, on the basis of the procedures set out in Exhibit 19, ascertained the sampling error in the estimates that you have previously testified to that are contained in Exhibits 16, 17 and 18?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 20 a tabulation of figures which is headed at the top "Estimated Sampling Errors of the Estimates of Additional Income Taxes Payable by Individual Beneficial Owners of du Pont Common Stock Represented by Survey Responses."

(Thereupon said document was marked defendant du Pont Exhibit 20, for identification.)

By Mr. Gribbon:

Q. Was Exhibit 20 prepared by you?

A. Yes, it was.

Q. Does it reflect the computation of sampling errors in accordance with the procedures which you have written up in Exhibit 19?

A. Yes.

Q. Have you attempted to ascertain the sampling error on all of the figures contained in your estimates?

A. No, we confined these computations to those estimates which assumed an income of $5.40 per year per share of du Pont.

Q. In other words, for just one of the computations that was made in the computable sheet, is that correct?

A. That is correct, and of course only for individuals.

Q. Now would you look at Exhibit 20 and explain, first by reference to the figures shown opposite the first column, "All Individuals," just what you mean—what "Sampling [fol. 1418] error" means in this connection?

A. Yes. I might point out that there was a typing error, so that under the column headed, "Owners" the number is the actual number and not in thousands.

Q. So the figures in parentheses should be eliminated?

A. That is correct—for the column, "Owners" only.

Q. Yes.

A. This table shows our estimate of the number of owners, represented by survey respondents, who were individuals, 117,928, and that this figure is subject to a sampling error of 4.5 per cent.

Q. What does that mean?

A. This means that in accordance with the design of this survey, if this survey should be repeated with the same care that was exercised in carrying this through, under essentially the same conditions, that the range 117,928 plus or minus 4.5 per cent would include the figure obtained from a complete census 68 per cent of the time, approximately.

Further, if we doubled that 4.5 per cent, making it nine per cent, we may make the statement that in a series of repetitions of this survey, if we establish a range of the estimate from the sample plus or minus nine per cent of that figure, this range has a probability of 95 per cent of including the figure that would be derived from a hypothetical complete census carried out with the same care.

Q. Now, Exhibit 20 discloses that your sampling error was somewhat smaller as to your estimate of the total additional tax that would be payable in the event of an additional distribution of $5.40 a year, is that correct?

A. I am sorry, I didn't understand what you were asking.

Q. I will repeat the question.

[fol. 1419] What does the table in Exhibit 20 disclose as to the sampling error in your estimate of the total dollars of tax payable by the shareholders at an assumed additional distribution of $5.40?

A. This shows that there would be an estimated tax of $50,528,000 and that this figure is subject to a sampling error of 2.8 per cent, which is interpreted in the same way as the example I gave for the number of owners.

Q. And on the effective tax rate, which is shown for "All Individuals" to be 57.9 per cent?

A. This is to be interpreted in the same way, namely, that if we consider the range 57.9 per cent, plus or minus four tenths per cent, thus giving us a range of from 57.5 per cent to 58.3 per cent, that the probability is 68 per cent, that that range covers the value that would be obtained from a complete census carried out with the same procedures and with the same care.

Q. Looking at that effective tax rate 57.9 per cent which you have estimated, is it correct to say that with a sampling error of four-tenths of one per cent, one can conclude that there is a 68 per cent chance that the true value of the effective tax rate will be between 57.5 and 58.3 per cent?

A. Yes.

Q. And is it also true to conclude that the chances are 98 per cent that the true value will be between 57.1 per cent and 58.7 per cent?

A. The correct probability for that range would be 95 per cent.

Q. 95 per cent, rather than 98 per cent?

A. That is correct.

Q. That is, there is a 95 per cent chance that the true [fol. 1420] value is between 57.1 per cent and 58.7 per cent?

A. That is correct.

Q. That sampling error you have ascertained can be proven by mathematical procedures?

A. Yes.

Q. Doctor Tepping, Exhibit 16 shows that you have been able to estimate from your survey the beneficial ownership of some 20,553,000 shares of du Pont stock.

Exhibit 6, however, which indicated the shares within the scope of the survey, showed that there were 30,781,182 shares within the scope of the survey.

How do you account for the difference between those shares you have made an estimate with respect to, in Exhibit 16, and the 30,781,000 in the scope of the survey?

A. This difference of approximately 10 million shares are those which are represented by nonrespondents to our survey.

Q. You have sent out questionnaires which, if answered, would have permitted you to make the same statistical estimate with respect to these shares?

A. That is correct.

Q. But you received no answers to those?

A. That is correct,—at least not complete information, not enough to be able to tabulate the results.

Q. How can these 10 million shares for which no representative response was received be regarded in terms of a hypothetical or complete census of du Pont shareholders?

A. If a hypothetical complete census were, in fact, made and carried out with the same procedures, and with the same care as exercised in the survey that we did carry out, we would have found that some people would respond and some people would not respond; and, in fact, the present survey estimates the number of people who would have responded, the number of people who would not have re- [fol. 1421] sponded, and the shares associated with those people, in this hypothetical complete census.

Q. And would you conclude that approximately 10 million of the shares would not have responded in a hypothetical complete census?

A. That is correct.

Q. Have you prepared a nonstatistical estimate of the distribution of these 10 million shares of du Pont stock which were included in the scope of the survey, but for which no represented responses were obtained?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identi-

fication du Pont Exhibit 21, a tabulation, entitled, "Estimated Beneficial Ownership of du Pont Common Stock Included in Scope of Survey, But Not Represented by Responses, by Type of Owner and Number of Shares."

(Thereupon said document was marked Defendant du Pont Exhibit 21, for identification.)

By Mr. Gribbon:

Q. I ask you to examine du Pont Exhibit 21, Doctor Tepping, and tell us whether that is the estimate you have prepared as to the distribution of the shares within the scope of the survey but not represented by responses?

A. Yes, it is.

Q. Have you also prepared an estimate of the additional taxes that would be payable annually upon a distribution of the General Motors stock with respect to these ten million shares that were included in the survey but for which no response was received?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identi-[fol. 1422] fication as du Pont Exhibit 22 a tabulation entitled, "Estimated Additional Income Taxes That Would be Payable Annually upon a Distribution of General Motors Stock by Individual Beneficial Owners of du Pont Common Stock included in Scope of Survey but not Represented by Responses."

(Thereupon said document was marked defendant du Pont Exhibit 22, for identification.)

By Mr. Gribbon:

Q. Was du Pont Exhibit No. 22 prepared by you, Doctor Tepping?

A. Yes, it was.

Q. Does it represent your estimate of the additional income taxes that would be payable by the shares of stock represented on the exhibit?

A. Yes.

Q. Now, Doctor Tepping, in describing the estimates contained in Exhibits 21 and 22 which have just been identified, you referred to them as non-statistical estimates.

Would you explain the significance of that term, particularly in relationship to the earlier exhibits which you described as statistical estimates?

A. The distinction that I had in mind was that, with respect to the earlier estimates of shares and the taxes on those shares represented by responses, the estimates are fully based on mathematical statistical theory, which permits one to make unbiased estimates, to know the mathematical properties of these estimates, and to be able to determine from the responses themselves an estimate of the sampling error of those estimates.

The estimates that I described as non-statistical estimates involve the exercise of judgment on my part and [fol. 1423] don't have the property that a sampling error can be estimated for them from the sample.

Q. Now, can you tell us on what basis you made the estimates set out in Exhibits 21 and 22 with respect to the remaining ten million shares of du Pont stock included in the scope of the survey? What factors did you take into account?

A. Essentially any such imputation procedure classifies the non-respondents into certain classes, classifies the respondents into the same classes, and imputes values to the non-respondents on the basis of the respondents that are members of the same class.

This kind of imputation procedure can be carried out in greater or less detail. In particular, I wanted in this case to take account, to the extent that it was possible for me to do so, of information that was available to me about these non-respondents, even where the information was not complete enough to permit the imputation of a tax.

Now, for example, if a sampling unit for which we had no response was an individual stockholder of record, and we had had no response at all from that individual, the only information we had about that individual then was the size of the holding of record and the fact that he was an individual of record.

My imputation procedure was then to distribute the owners and shares for the responding individuals of record according to the size of record and type of stockholder of record.

Then distribute the non-responding shares of stockhold-

ers into those same classes, thus providing an estimate of the number of stockholders and the number of shares in each of the type of owner classes and in each of the size of ownership classes.

[fol. 1424] The last phase then was to impute tax rates for groups of non-responding stockholders of record according to the tax rates observed for the responding individuals in those same groups.

Other classes of non-responding stockholders were treated in a generally similar manner, though in some cases we had more information.

For example, if individuals known to be individuals and known to be either beneficiaries of trusts or not to be beneficiaries of trusts as reported to us by the fiduciary, the bank, the broker, partner, whoever reported to us, where we had this much information it was not necessary for us to impute the size, the number of shares owned. It was not necessary for us to impute the type of respondent.

In such cases it was necessary only to impute the tax rates, and this was done by distributing them according to shares owned and by whether or not they were a trust beneficiary, and then to impute the same tax rate as for the similar class of respondents.

A third large class consisted of those accounts of banks, brokers and nominees, where the size of the account was known but no other information was available.

In such a case, in this case, we distributed the shares for which we had had a response according to the type of owner and shares owned, but making this distribution by size of account.

We then, for the same size of account, imputed the distribution by type of owner and number of shares owned for the non-responding ones in the same size of account class.

We then imputed the number of owners in each of [fol. 1425] those classes, assuming that there was the same average number of shares per owners as among the respondents that were members of the group defined similarly, and imputed tax rates according to type of owner, shares owned, and size of account.

These three were the major groups for which I found it necessary to make imputations. There were four other groups, but these were much smaller ones.

Q. But the factors that you have described were the principal factors taken into accounting in arriving at your estimate?

A. Yes, and any imputation for the other smaller classes was of the same general character.

Q. Did you make any statistical checks on the estimates that you arrived at on the basis of the factors you have just outlined?

A. Yes. There are two things that might be said in that connection.

In the first place, I had, before that point at which these estimates were available to me, constructed estimates on a less detailed basis; that is to say, taking into account considerably less information than was known about the non-respondents, and got, on the basis of these three assumptions, of course, three different numbers as to the tax.

My judgment is, however, that these three numbers are not greatly different from the one that I arrived at by the detailed imputation procedure, which gives me a certain feeling of security that perhaps none of them is widely off the mark.

The other——

Q. Before you leave those three different assumptions, do you mean that you did this entire computation for every figure in Exhibit 22 on three other assumptions?

A. No, I don't mean that. I mean that I estimated merely [fol. 1426] the total tax at the assumed value of $5.40 per share of du Pont per year, that single figure.

Q. That single figure, you estimated that on three bases quite separate and apart from the factors that you took into account in arriving at your estimate in Exhibit 22?

A. Yes.

Q. Now do you happen to have the figures that you arrived at in the three different assumptions that you made to check the accuracy of Exhibit 22?

A. Yes, I do.

Q. You had better first, by reference to Exhibit 22, show the figure that you were checking in your procedures. Here is Exhibit 22.

A. Thank you. In Exhibit 22, on the first line marked, "Total Individuals," and in the column headed, "$5.40 Tax," we find the figure of 27,277,000.

Q. And that figure is your estimate of the total additional tax payable by these 9 million shares of du Pont stock in the event of a distribution of $5.40 a year?

A. That is correct.

Q. Now, as I understand it, you took three different assumptions and attempted to check that figure of $27,277,000. Would you tell us in each case what the assumption was briefly and what the result was, compared with $27,277,000?

A. The first assumption that comes to mind is merely that the non-responding stockholders—stockholdings, I should say, are distributed over-all in the same proportions as the responding holdings. We then looked at the effective tax rate that we had estimated for the responding holdings, applied that to the non-responding shares and find a tax of $26,022,000.

Q. And that is to be compared with the figure on Exhibit 22 of $27,277,000.

A. Right.

[fol. 1427] Q. What was the second assumption?

A. In the second assumption we split up the non-respondents into a few classes. First of all, we set aside in one group those nonresponses that the evidence indicated were individuals. Let me refer to them as "presumed individuals" for this purpose.

We assigned to them the same effective tax rate as for responding individuals. We then put aside in another class those non-responding entities which, on the basis of the information we had, we felt were probably trusts. In many cases we knew they were trusts. We assigned to them the same effective tax rate as for responding trusts.

We set aside in another class the accounts of banks or brokers and assumed the same effective tax rates as for all responding holdings, not being confined to banks and brokers, and then assumed that all others pay no tax, because we just did not add any more in.

Now, on the basis of that assumption, the tax comes out as $29,982,000.

The third assumption did not differ very much from the second assumption, except that we thought we improved it a little bit by assuming that the presumed trusts, in the language that I just used, had the same effective tax rate

as combined responding trust beneficiaries and trust corpora, rather than the overall tax rate. On that basis, the estimated tax was $30,672,000.

Q. Are you satisfied, Dr. Tepping, based upon your examination of these figures, that the factors which you have taken into account in making the estimate contained in Exhibit 22 are reasonable and reliable?

A. I think it is very likely that they are good, useful figures.

[fol. 1428] Q. Realizing they cannot be proven on a statistical basis?

A. Yes.

Q. Has your statistical estimate of the additional tax payable by du Pont shareholders strongly influenced your non-statistical estimate of the tax that would be payable by the balance of the shareholders for whom no response was received?

A. Certainly.

Q. That is probably then the most important single factor in that estimate, is it not?

A. Yes. The description I just gave shows what we did essentially was to impute values to the non-respondents, that depended upon the values that we observed for respondents in classes that we could define for both non-respondents and respondents.

Q. In your judgment, may the survey responses be so used to impute type-of holding characteristics and tax-paying characteristics to the balance of the shares not covered by responses?

A. Well, in my judgment, this gives a good useful figure. It is not, however, justified by the mathematical theory which supports the so-called statistical estimates.

Q. What is the basis for your statement that nonetheless, the survey responses may be used in the manner in which you used them?

A. Well, in addition to the observation that the four estimates made did not differ substantially, I was also able to make a check of a different kind.

Some six weeks or so before we made the final tabulation we had occasion to make a preliminary tabulation on the basis of those responses that were already in at that time. This was in the first part of November, 1958.

I was able to compare the results of this preliminary tabulation with the results of the final tabulation, which [fol. 1429] included all responses up to December 26, and I find that the difference between these is not great.

This implies to me that the late responses are not substantially different overall than those that came in earlier in the course of the survey.

Q. Have you prepared a tabulation which brings out the comparison between the early responses and late responses that you have just described?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 23-A and 23-B, respectively, a tabulation entitled, "National Analyst, Inc. Survey of du Pont Stockholders," and sub-titled, "Shares Represented by Responses," and a sheet of paper containing two graphs entitled, "Effective Tax Rates by Shares Owned Estimated from the Preliminary and the Final Tabulations."

(Thereupon said documents were marked Defendant du Pont Exhibits Nos. 23-A and 23-B.)

By Mr. Gribbon:

Q. I hand you du Pont Exhibit 23-A and B, and ask you whether the tabulations and graphs contained thereon are the comparison between the results of the preliminary survey and the final results that you have just described?

A. Yes, they are.

Q. Would you take Exhibit 23-A first, Dr. Tepping, and tell us what was the state of responses when you made your preliminary tabulation, as compared with the final tabulation?

A. As Exhibit 23-A shows, at the time that the preliminary tabulation was made, the responses that could be placed into that tabulation represented 8,500,000 shares for persons who are not beneficiaries of trusts, and 2,060,000 shares for beneficiaries of trusts.

[fol. 1430] The final tabulation, on the other hand, had responses in it which represented 10,426,000 shares, or an increase of 23 per cent in the number of shares represented for persons who are not beneficiaries of trusts.

It contained responses that represented 5,746,000 shares

for persons who were beneficiaries of trusts, and this represented an increase of 179 per cent in the number of shares represented.

Q. Now, then, would you turn to the graph which has been identified as Exhibit 23-B and explain the significance of the charting on those graphs?

A. In these charts I have graphed the effective tax rate as a function of the number of shares owned separately for beneficiaries of trusts and for persons not beneficiaries of trusts.

In each case the dotted line represents the effective tax rates estimated from the preliminary tabulations and the solid line represents those for the final tabulations.

The dotted line and the solid line in each case are very close together in spite of the fact that, especially for beneficiaries of the trusts, there is a substantial increase in the number of shares represented by responses.

Q. What conclusions do you draw from a comparison of the results of the preliminary and final tabulations as set forth in Exhibit 23-B?

A. I draw the conclusion first of all that if we had extended the period of the survey so as to allow more responses to come in, we would not greatly have changed the estimates for that part of the population represented by the responses.

It also strengthens my feeling of the usefulness of the computations that I have made for non-responses.

[fol. 1431] Q. Now, Doctor, if you will turn to Exhibits 21 and 22, which have previously been identified, have you in Exhibit 22 estimated, on the non-statistical basis you have described, the additional tax that would be payable by all of the stockholders owning the 10 million shares that were not represented in the survey results?

A. I have made these estimates for the total individuals representing 9,005,000 shares.

There are left out of this table those persons paying zero tax, and so forth. I think that is clear.

Q. May I direct your attention to Exhibit 21, the last seven categories of stockholders that you have estimated?

A. Yes.

Q. Have you made any tax estimate for those categories?

A. No, we have not.

Q. Now you have already referred to your estimate, in Exhibit 22, of $27,277,000 as being the additional tax payable by the individual beneficial owners of the 9 million shares covered in Exhibit 22?

A. Yes.

Q. What is the relationship between that figure and the figure of $50,528,000, which you estimated under the same assumptions in Exhibit 17?

A. The figures in Exhibit 17 are obtained by adding together the figures shown in Exhibit 16 for shares represented by responses; and the figures from Exhibit 22 for those represented by non-responses.

Mr. Gribbon: Read it back, please?

(Question read.)

By the Witness:

A. I understood the question, but I referred to the wrong tables.

[fol. 1432] Exhibit 17 shows the estimates for shares represented by survey respondents. Exhibit 22 shows the so-called non-statistical estimates for those shares that are represented by non-respondents.

Q. Is there any duplication between the two figures?

A. There is no duplication; they represent different shares.

Q. Have you prepared a summary of the additional tax which would be payable by the beneficial owners of all of the du Pont shares within the scope of your survey?

A. Yes, I have.

Q. Have you first prepared a summary showing the estimated beneficial ownership of all du Pont common shares by type of owner and number of shares?

A. Yes, I have.

Q. Without regard to the taxability; just the distribution of the shares?

A. Yes.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 24 a tabulation entitled, "Summary, Estimated Beneficial Ownership of du Pont Common Stock by Type of Owner and Number of Shares."

(Thereupon said document was marked defendant du Pont Exhibit 24 for identification.)

By Mr. Gribbon:

Q. Is Exhibit 24 the summary which you have just described of the beneficial ownership of du Pont common shares?

A. Yes, it is.

Q. It was prepared by you?

A. It was.

Q. In preparing Exhibit 24, Doctor Tepping, what [fol. 1433] groups of stock holdings did you include? What specific groups did you include within the summary?

A. We showed individuals who were trust beneficiaries; we showed individuals who were not trust beneficiaries; tax liable corporations, including those in scope and those out of scope of the survey; charitable, educational and fraternal organizations; pension funds and other tax free entities; non resident aliens and foreign organizations; estates, common and mutual funds; trust, corporate, and miscellaneous classes, and others or not classified.

Q. Does this summary purport to estimate the beneficial ownership of all du Pont common shares?

A. Yes, it does.

Q. That would include those that were excluded from the survey, is that correct?

A. Yes.

Q. Those that were represented by responses to the survey?

A. Yes.

Q. And those that were not represented by responses, and for whom you had to make a non-statistical estimate?

A. That is correct.

Q. I direct your attention to the slight difference between the figure 45,536,000 shares in Exhibit 24, and the figure of 45,604,220 shares in Exhibit 6, which is indicated by the du Pont records to be the total number of shares outstanding.

How do you account for that slight discrepancy?

A. The figure 45,604,220 shares is one derived from a statistical tabulation made by the du Pont Company, as I understood it from a file of so-called statistical cards.

The figure shown in Exhibit 24 is one obtained as a product of our having sampled through the same set of cards

[fol. 1434] which presumably resulted in the figure shown in Exhibit 6.

The one reason for a difference between those two is that they just came out different; that is to say, with a large file of cards it is not unusual that the repetition of counting the cards will lead to a somewhat different result.

A second reason for the difference of slight discrepancies between the number of shares shown in the record which we used for sampling from du Pont, and the number of shares reported to us by a bank or broker as the consequence of our inquiry using Form No. 2.

Now when we received from a bank or broker a completed Form No. 2, we first checked the total of the shares shown in the listing of accounts in that return and compared it with the holdings shown by the du Pont record. If the discrepancy was small—a few shares or less than a tenth of one per cent of all the shares in the case of large holdings, or something like that—we made no effort to correct it. If there was any discrepancy of substantial size, we entered into correspondence usually, and sometimes by telephone, with the responding bank to try to find out why the discrepancy existed and to resolve it. We did, in fact, resolve many of them.

The principal discrepancies in this regard were from brokers.

Q. All of these things added up came to this ultimate discrepancy?

A. Yes.

Q. (Continuing) In the difference between Exhibits 6 and 24.

Do you regard that difference as having any significant bearing on the validity of your estimate?

A. Not at all.

Q. Have you also prepared a summary which estimates [fol. 1435] the individual income taxes that would be payable upon distribution of General Motors stock by the individual beneficial owners of du Pont common stock?

A. Will you repeat that question, please?

Q. Have you prepared an estimate of the tax, the additional tax, that would be payable by the individual beneficial owners shown in Exhibit 24?

A. Yes, I have.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit 25 a tabulation entitled, "Summary, Estimated Additional Income Taxes That Would be Payable Annually Upon a Distribution of General Motors Stock by Individual Beneficial Owners of du Pont Common Stock."

(Thereupon said document was marked defendant du Pont Exhibit 25 for identification.)

By Mr. Gribbon:

Q. Was Exhibit 25 prepared by you, Doctor Tepping?

A. Yes, it was.

Q. Does it represent your combined estimate of the additional income taxes that would be payable annually upon a distribution of General Motors stock by individual beneficial owners of du Pont common, on the assumptions you have stated in your testimony?

A. Yes.

Q. Does Exhibit 25 purport to represent the total tax that would be payable by all individual beneficial owners of du Pont common stock?

A. With the same restrictions as in the earlier discussion.

The tax is estimated only for individuals here, whether trust beneficiaries or not trust beneficiaries. The footnote [fol. 1436] to the table shows certain classes for whom no tax was estimated.

Q. So to the extent that any of the shares shown in the footnote, Footnote No. 1, were repired to pay taxes at individual income tax rates, any such amounts would have to be added to the estimate contained in Exhibit 25?

A. Yes.

Q. Now Exhibit 25, as I understand your assumptions, is confined to the additional income tax that would be payable in a single year upon a certain assumed additional distribution to du Pont stockholders?

A. Yes.

Q. Would you take your column headed, "5.40" and explain what the significance of the figure of $77,805,000 is?

A. Seventy-seven million——

Q. First, what does the "5.40" represent?

A. "5.40" is the additional income per year, per share

of du Pont stock; and this corresponds to a ten-year distribution of General Motors stock in equal annual installments at a market price of $39.20 per share of General Motors stock.

Under those assumptions, for all individuals, with the exclusions indicated by the footnote, the total tax to be paid in a year would be $77,805,000.

Q. What would be the total tax payable over the 10-year period of distribution?

A. The tax in a 10 year period, assuming the same conditions as prevailed in 1957, would be ten times that figure, or $778,050,000.

Q. $778,050,000?

A. Right.

Q. And that assumes market value of General Motors at $39.20 in a 10-year distribution?

A. Yes.

Q. Now, if the market value of General Motors were to be less than $39.20 at the time of distribution, how would [fol. 1437] you be able to estimate the tax on the basis of Exhibit 25?

A. The tax would then be lower, as, for example, if we look at the preceding column, which is $3.70. This is equivalent to a 10-year distribution at a General Motors market price per share of $26.86.

Under those conditions, the tax would then be estimated at $52,808,000 per year or $528,000,000 over the 10-year period.

Now, other assumed values can also be computed from this table by a process of mathematical interpolation.

Have you made such a computation by interpolation from this table?

A. Yes. We were requested to make such an interpolation for a value corresponding to $36 per share of General Motors stock.

Mr. Gribbon: I ask that there be marked for identification as du Pont Exhibit No. 26, a tabulation entitled "Estimated Additional Income Tax that Would be Payable Annually Upon Distribution of General Motors Stock by Individual Beneficial Owners of du Pont Common Stock on the Assumption that the Market Price of General Motors Stock is $36 per share, and the Distribution is

Made in Equal Annual Payments Over a Period of ten years."

(Thereupon said document was marked Defendant du Pont Exhibit No. 26, for identification.)

By Mr. Gribbon:

Q. Was Exhibit 26 prepared by you, Dr. Tepping?

A. Yes, it was.

Q. Would you explain briefly in relation to Exhibit 26 how the figures thereon were derived from the figures [fol. 1438] shown in Exhibit 25.

A. They were derived by process of interpolation from the figures shown in Exhibit 25. This amounts to a mathematical procedure for drawing a curve and seeing where intervening values would fall.

Mr. Gribbon: I believe that closes the direct examination, your Honor.

At this time, I would like to offer in evidence du Pont Exhibits 6 through 26, which are the exhibits that have been identified during Mr. Tepping's testimony.

Mr. Andrews: We have some objections to those exhibits, your Honor.

The Court: Are you objecting to all of them?

Mr. Andrews: Yes.

The Court: The objections are overruled.

Mr. Andrews: I would like to be heard on them, your Honor.

The Court: Proceed.

Mr. Andrews: I would first like to ask a few questions of Dr. Tepping, if I may.

The court. You may.

By Mr. Andrews:

Q. Doctor Tepping, is the information and data that you used in obtaining your estimates in this survey based on the questionnaires that have now been identified as du Pont Exhibits?

A. I don't believe we identified any—oh, yes, they are.

Q. As to the individual stockholders, not the beneficial owners of this stock, is it solely derived from these questionnaires? Did you have any conferences with these stock-

holders or did they call you up? I am referring to the individual stockholders?

[fol. 1439] A. Well, there were some cases. I recall one case in which a stockholder called me up. She had difficulty in filling out, and I filled it out for her on the basis of information she gave me on the telephone.

Q. But, generally, it was based solely on the information received from the questionnaire?

A. Usually it was, yes.

Q. As I understood your testimony, Doctor Tepping, in the case of beneficial owners of these stocks, you obtained their names from various bankers, banks and brokers, is that correct?

A. No, we never obtained their names. We got the information from such beneficial owners through the fiduciaries but without ascertaining their identities.

Q. I see. Then what was the procedure after that? You then sent questionnaires directly to beneficial owners, or did you have a fiduciary do this?

A. The fiduciary transmitted blank copies of the questionnaires to the beneficiaries designated by us.

Q. I see. Now I understood that you did have some conferences with various banks and brokers about some confusion they had as to the questionnaires, or what was that?

A. There were some cases in which the fiduciary did not completely understand the procedure and asked for further instruction.

Q. Then, again, your estimates and your surveys are based solely on the information and data you received as a result of these processes you have just described?

A. Yes.

Mr. Andrews: Well, your Honor, I believe clearly that these questionnaires as sent out, they are clearly hearsay, and his testimony and the surveys are based solely on these questionnaires. The mere fact that he is an expert does not save that.

I think there are a number of cases that I can cite [fol. 1440] for your Honor which say that if an expert's testimony is based solely on questionnaires, which are themselves hearsay, then his testimony is also hearsay.

The Court: Do you wish to be heard, Mr. Gribbon?

Mr. Gribbon: Well, briefly, your Honor, to say that the material contained in the questionnaires is hearsay is, as your Honor well realizes, only half of the story.

There are as many exceptions to the hearsay rule as there are applications, and this is one of the well recognized exceptions to the hearsay rule in modern jurisprudence.

There are any number of cases, particularly in complicated litigation of this kind, beginning with the Aluminum case, twenty years ago, and the case Judge Campbell decided two years ago, the A&P case, which hold this is a properly recognized exception to the hearsay rule because it meets both of the basic tests of an exception.

In the first place, it is the only way that you really can get evidence of this kind, and the evidence is exceedingly important in the disposition of a matter of this kind.

Beyond that, there are complete safeguards as to the trustworthiness of the manner in which the evidence was obtained. That is a matter for cross examination.

If any objection is to be made to the procedures followed by Doctor Tepping, it can be done on cross examination. It could go to the weight to be attached to that testimony. We are not at all afraid of any such cross examination, but it does not go to the admissibility, and the cases clearly establish that this is a well recognized exception to the hearsay rule.

[fol. 1441] Mr. Andrews: Your Honor, I would disagree with Mr. Gribbon. It does not come within any of the established exceptions to the hearsay rule. Now, if he is trying to establish another exception, he is free to do so.

I can also cite cases, your Honor, in which such surveys have not been admitted on the basis of hearsay, and I would like to cite a recent Section 7 case in St. Louis, the Brown Shoe case, wherein Judge Weber did exclude such a survey.

The Court: I think they are admissible. Objection overruled.

(Said documents, so offered and received in evidence, were marked, respectively, Defendant du Pont Exhibits 6 to 26, inclusive.)

The Court: Proceed with cross-examination.

Mr. Andrews: All right.

By Mr. Andrews:

Q. Doctor Tepping, referring to your testimony, I believe you stated that you used a method of probability sampling because the probability of selection is known in advance or was known in advance? Is that your testimony?

A. I testified we used a probability sampling method, and the probability of selection is known in advance for such method.

Q. Would you elaborate on this? What do you mean that the probability of selection in this case was known in advance?

A. The method actually used, mechanical procedure followed in the selection of the stockholdings to be queried, depended upon a choice of a random number. It can be [fol. 1442] shown mathematically that with such a method of selecting the sample, the probability of selection is then known for every individual in the file from which we made the selection.

Q. As to the sampling errors in this regard, as far as bias is concerned, errors which introduce bias, do they have the effect of canceling out, or what was your assumption in that regard?

A. I don't believe an assumption is involved. Perhaps I don't understand your question.

Q. Perhaps my question is not too clear. These sampling errors that you spoke about that come into your survey, first of all, talking about such errors pertaining to bias that may result either to one party or another, understating or overstating the tax, could these errors of underestimating or over-estimating tax, could they be cumulative as well as canceling out? In other words, perhaps they are all in one direction?

A. A distinction is made in mathematical theories of statistics between a bias and a sampling error.

The distinction goes along these lines: that if a particular sampling procedure is repeated over and over again, each repetition of that procedure gives rise in general to a different number.

These numbers have a certain distribution, and one can mathematically determine how the average of all of these

sample estimates is related to the quantity which is being estimated.

Now if, in fact, the average of all of these sample estimates is equal to the quantity being estimated, that estimate is said to be unbiased. The sampling error is a measure of the dispersion of these estimates about the value being estimated in such a case.

Q. Thank you. Referring to the other type of technique [fol. 1443] that is used in sampling, I think you refer to it as judgment sampling?

A. Yes.

Q. Could you describe to us what that is?

A. Judgment sampling covers a wide variety of methods of sampling whose common characteristic it is that the selection of a respondent depends in some degree or another upon the judgment of the person actually doing the selection, rather than to depend upon a random process.

Q. Does this process take into account the characteristics and the varieties of units that may exist in the universe?

A. It may or may not.

Q. In this connection, do they employ what they call the Latin square method to derive the sample?

A. In judgment sampling?

Q. Yes.

A. Yes, I am sure that some people do.

Q. Now, as I understand the method that you used, Dr. Tepping, you took, in the cases of stockholders having one to one hundred shares, I think it was, you took every two thousand of stock holdings?

A. No, we took every two thousandth share.

Q. Did you just go down the list and take one, and then take the next two thousand? Is that the way it was done?

A. No. We had a file of cards, each card representing one stockholder, and this card showing the number of shares of du Pont held in the name of that stockholder.

We then wired an IBM machine, called the Type 604, which simply added the numbers of shares shown on successive cards of this file, applied the random selection that I mentioned a few minutes ago, and punched a hole in a specified position into the card which contained the selected share.

[fol. 1444] Q. I see. Did you at any time make a study

of all the stockholders of du Pont as to what per cent was in certain income class and what was in another income class? Did you ever make a study of that kind?

A. No.

Q. In view of the fact that you were considering the additional tax that they would have to pay if a distribution is made as a result of this hearing, wouldn't this have been of great importance, to have studied the large classes, what per cent was in a particular class, and then choose your sample based on this distribution?

A. If such information had been available, it would have been useful to me in, perhaps, being able to reduce the sample size required to obtain a certain precision.

I am not sure that under the circumstances it would even have done that, but it might have.

On the other hand, it wasn't at all essential that this information be available in order to determine a design which was certainly valid on the basis of statistical theory and which would provide estimates that appeared, and later turned out to be, of sufficient reliability to be useful.

Q. You said that this information was not available. Did you not have cards for all the individual stockholders of du Pont which did have this information?

A. The card, of course, does not have the information to which you refer.

Q. When you reconstructed these 1957 income tax returns, you did it on the basis of the information you received on the questionnaires?

A. Yes, of course.

Q. I think you referred to surveys that are run by census, and I think the Bureau of Labor Statistics, The Federal Reserve Board, and they often use this probability sampling that you have used here?

A. Yes.

[fol. 1445] Q. Do they also use judgment sampling?

A. Some of them do.

Q. Are you familiar with the 1950 survey of consumer expenditures conducted by the Bureau of Labor Statistics?

A. No, not in detail.

Q. Now, I believe you testified that after you received the results of your survey as it came from the questionnaires plus some conferences, that you applied factors to

these particular results to obtain the results of a hypothetical census of all stockholders, is that correct?

A. Yes.

Q. Would you tell me how you derive these factors?

A. These weighting factors, so called, are derived entirely from the probabilities of selection with which the units were selected. Thus, for example, as I indicated on direct examination, if an individual stockholder of record held 40 shares, his probability of selections was 40 over 2000, which is 1 in 50, and therefore he was taken to represent 50 stockholders.

We determined his characteristics by means of a questionnaire. If it turned out, for example, that he would pay $100 in tax, then the factor applied to that $100 was 50, the reciprocal of the probability of selection.

Q. Did you attempt to determine what sampling error was presented by the method that you used as compared to whether or not it was representative of the whole universe or all stockholders of du Pont?

In other words, when you took one particular stockholder, did you attempt to determine, after you reconstructed his 1957 income tax return, did you attempt to determine just how many like stockholders were in the same income group as this particular one?

[fol. 1446] A. No. The procedure depended entirely upon the probability of selection of that stockholder.

Q. I see, and you never developed any sampling error of any kind in this regard as to whether or not it was representative?

A. I don't think I understand the question.

Q. You never developed, in other words, when you talked about sampling error, did you take into account the fact that this particular stockholder whom you may have chosen and reconstructed his tax return, like I think you said if he had 40 shares that represented one-fiftieth—

A. If he was selected as a stockholder of record having one to a hundred shares. The probabilities of selection were different.

Q. Did you conduct any tests of any kind to see how representative this stockholder may have been of the total universe?

A. No, it wasn't necessary to do so.

Q. Because of the probability sampling or this random sampling that you applied?

A. Yes, because we used probability sampling it was possible to make unbiased estimates whose validity depends upon the mathematical theory. It was possible to estimate sampling error from the data its which are valid sampling errors for the estimates derived from the survey.

Now, if in fact you had more information, for example, we could classify stockholders in the original list into people who were similar in some sense, we could again, as in answer to your earlier question, have improved the efficiency of the sample, which means only that we could have gotten results of the same precision at a somewhat lower cost.

Nevertheless, the procedure we used, while it might lead to larger sampling errors than would have been available [fol. 1447] if we had had more information about stockholders are still valid and the sampling errors derived from the sample results are valid estimates of the true sampling errors.

Q. Are you aware of the fact that the Bureau of Labor Statistics in their surveys, at least in 1951, did use this judgment sampling?

A. Yes, I am aware that various agencies of the Government and other organizations have in the past used judgment samples of various kinds.

Q. Does not this judgment sampling method have the advantage in that if you do not get a response from a particular stockholder, you know his particular characteristics, you could seek one like him if you had chosen him in the first place to be representative of the total universe?

A. No.

Q. That is not an advantage?

A. No.

Q. Is not this what the Bureau of Labor Statistics does?

A. It is often done. That process, if I may make an explanation—that process is exactly identical in principal with the process I used for the non-responses.

Q. But it appears to me you did not take into account just how the total stockholders of du Pont were characterized, how many of them were of a certain income group, whether 10 per cent was below 5,000, 20 per cent over 10,000; it seems to me like you introduced quite a bit of

error when you go down the list and take every two thousandth.

A. Well——

Q. In view of the fact of what your ultimate purpose was in conducting this survey.

A. It is not true to say that we introduced error. What is true, and all that is true, is that by not having such information, not having it because it was not available, we [fol. 1448] had to use a somewhat larger-sized sample than we would have had to use in the hypothetical situation of its being available.

Now, the fact that it is not available does not make the sample invalid, it merely makes the sampling errors larger than they would otherwise have been or, alternatively, it makes the cost larger than it would have been with the same precision of results if there had in fact been available such additional information.

Q. I see. Not to belabor the point, Dr. Tepping, but I think to illustrate your method you used an example if you were trying to determine the change in everybody's pockets in this room, that you could by using your method take certain persons' change and then derive this sampling error and then come to a final conclusion.

I would ask you, wouldn't it be more accurate, or wouldn't your estimate in this regard have more validity if you could ascertain who the people in this room were, how many were, say, lawyers, or how many were working for the Government—no, seriously, wouldn't it be more accurate if you could do that? I mean, that would probably give you more basis for your estimate.

A. If we interpret the words properly, this statement is true. I would say it in the following way, that if we had such additional information about, for example, the usual occupation of people in this room, and if in fact that usual occupation had any relationship to the amount of change that a man had in his pocket, then I could estimate the average amount of change in a man's pocket with the desired precision with a smaller sample than if this were not the case, or if I were not able to classify the people in this room by usual occupation.

Q. If it was possible for you to conduct a survey on [fol. 1449] the basis of judgment sampling, is it your

opinion that it probably would have been more accurate than the method you chose?

A. Would you repeat that?

Q. If it was possible and you had the information available that you would need to conduct a survey that you conducted, according to judgment sampling—in other words, you took into account the various characteristics of these people, and you could do that, wouldn't it be more accurate than the method you used?

A. No.

Q. It would not?

A. No. If such information had been available, I would have used such information in a probability sample. It would not have been the same design that I in fact did use, but it still would have been a probability sample and not a judgment sample. Now, there are probability samples——

Q. Well, let us elaborate on that. Now, you would have still taken into every two thousandth shareholder but I gather if you had the additional information and you knew the composition of the whole universe, all du Pont stockholders, then you would have selected enough of these particular ones to represent all aspects; is that what you would have done?

A. No.

Q. What would you have done with the additional information?

A. Let me point out that we did in fact have some information about du Pont stockholders, and that we made use of this information. We knew, for example, that someone had classified a particular stockholder as male or female, as a bank, as an insurance company.

This classification was made use of. This information about the stockholder was made use of. We made use also of the information about the number of shares held.

Now, if more information than this had been available [fol. 1450] for all stockholders, we would have made use of that information in essentially the same way. We would have broken down our classification into smaller groups.

We would have taken still a probability sample of every two thousandth, although it might be with this additional information we would have been content with, say, every twenty-two hundredth instead of every two thousandth in a

similar class; but the probability samp[illegible] would still be there. It would still be a probability sample.

The probability of the selection would still be known. We would be able still to estimate sample errors and no judgment would have been involved in the selection at all, but only in the classification of the population used to establish what is called a frame for the sampling.

Q. I think it was stated, either by you or Mr. Gribbon, that certain corporations were eliminated from your survey of certain groups, such as foreign stockholders, et cetera. Was this your choice or counsel for the defendants' that these groups were eliminated?

A. I was instructed not to include those in the scope of the survey.

Q. And the reason for this was that you did not have information as to many of these or it was difficult to obtain?

A. As far as I was concerned, I was simply instructed that these were not to be in my study.

Q. Were these instructions given to you before you even began your survey?

A. Yes.

Q. Now, I think your testimony was that for stockholders with 100 shares or less you got one out of 2000, every two thousandth?

A. Every two thousandth share.

Q. And for 100 to 500 you got every one thousandth share?

A. Yes.

Q. And above one thousand you got virtually every share?

[fol. 1451] A. Every share was included in the sample for holdings over a thousand.

Q. I see. I think you further said that there was no bias introduced by this method since you did not average these together, you developed your estimates separately for each group?

A. Yes. That was part of my answer.

Q. Even though there was no bias introduced by this method, how would they compare as to accuracy? Would your selection—would the group represented by stockholders having over 1,000 shares be a more accurate sample

than, say, the smaller group, the first category? How would they compare as to accuracy?

A. You mean, how do I estimate that they actually did compare, or did you say would compare?

Q. Either way.

A. The table that was introduced as Exhibit 20 shows the sampling errors estimated from the samples themselves for shares represented by survey respondents. Now, were you specifically asking about the estimates of tax rates for the total taxpayers?

Q. Yes; I wanted to know what was the sampling error for each group.

A. Well, the sampling error depends upon what it is you are estimating. If we look at our estimates of effective tax rate we find that individuals owning 1 to 100 shares would be taxed at an effective tax rate of 31.2 per cent, that this is subject to a sampling error of 4/10ths of a percentage point; that individuals having more than 5,000—owning more than 5,000 shares would be taxed at an effective tax rate of 81.3 per cent, and that this is subject to a sampling error of 2/10ths of a percentage point, these estimates being based on the assumption that the additional income is $5.40 per share of du Pont per year.

[fol. 1452] Q. I believe that you testified that you did not compute any coefficients of correlation as between the tax rate of the stockholder and the number of shares that he held; is that correct?

A. That is correct, we did not compute any such correlation.

Q. However, I think you went on to state that on an average you found that owners of 100 shares were in a lower tax rate from those with 5,000 shares?

A. Yes, I said that the average effective tax rate estimated from the sample for owners of 1 to 100 shares was lower than the average effective tax rate for all persons owning over 5,000 shares.

Q. Now, again, Doctor Tepping, when you give this average figure you are referring only to the group actually chosen, not the universe as a whole, is that correct?

A. Well——

Q. In other words, you found—allow me to explain that. You found that by reconstructing these 1957 tax returns,

as you did, that this proposition you have just stated was so. This did not mean that it was necessarily true for the total universe, is that correct?

A. These are estimates which refer to those shares which are represented by survey respondents, as I mentioned earlier.

Q. I see. So that it would not necessarily be true or you do not know it to be true for the whole universe, is that correct?

A. My knowledge about this is precisely the same as my knowledge about any of the other estimates which I have presented here. They are estimates based upon survey respondents; they represent estimates for that part of the population which is represented by survey respondents. These are the statistical estimates.

[fol. 1453] Q. I understand that, Dr. Tepping, but what I am referring to is this very statement that you have just made. You are referring only to those stockholders that you have chosen.

Now, you do not mean that this is necessarily so—or is this present in any of your exhibits in this particular file? I mean, did you attempt to project this to the whole universe?

A. All of these figures are projections, if you like to call them that. They are estimates of what a hypothetical complete census would have shown, subject to sampling errors, and other limitations that we have discussed here.

Q. Now, what test did you apply or did you conduct to determine if any of the questions that you used in your questionnaire were confusing to the stockholders, or if they understood what you were asking for? Did you develop any tests in that regard?

A. We conducted a pre-test of the survey in the early summer, examined the returns, spoke to some of the respondents to see what kind of difficulties they had, talked to banks who would have had to handle these forms, to find out whether the manner in which we asked the questions placed a burden on them which would have made accurate answers impractical or impossible, and followed the general procedures that we follow in pre-testing a survey.

Q. Do I understand that you actually went to the inter-

viewees and asked to run a test with them to see if they understood the questions?

A. In some cases.

Q. Now I think you stated that the banks, the various banks and brokers were extremely cooperative?

A. Yes, they were.

Q. In supplying information.

[fol. 1454] What do you mean by that term? Did most of them mail you questionnaire back?

A. I beg your pardon?

Q. Did most of them mail your questionnaire back that you had submitted?

A. After a time. Some of them were a little slow and had to be prodded, and we spent a lot of time on telephone calls and telegrams to remind them that these things were due; but there were extremely few who refused to give us the information. There were many of them who reproduced some of our letters, explaining the purpose of the survey, for transmittal to the beneficiaries, who wrote additional letters explaining that they thought it would be a good idea to cooperate in the survey to elicit information; and that kind of cooperation is what I am talking about.

Q. Did you have many conferences with these various banks and brokers as to what you were after with this questionnaire, as to the meaning of it?

A. No. The conferences which I and my colleagues held with these people were not properly called "conferences"; they were instruction sessions, to help them to understand how the mechanics worked rather than the motives behind the survey or any questions of that kind. These, we felt, were completely covered by the form letters included with the materials.

Q. Would you tell me, Doctor Tepping, how many individual stockholders did not submit responses to your questionnaire, either percentage-wise—or what proportion?

A. How many individual stockholders?

Q. Yes—not beneficiaries.

A. Selected for the initial sample?

Q. Yes.

A. I don't know.

Q. You have no idea how many?

A. I don't know.

[fol. 1455] Why is that? How is that?

A. It was of no importance to me, and I therefore didn't keep any record of it.

I know how many responses I obtained.

Q. Well, you said it was of no importance. I would like to pursue that a little further. I think you started out by choosing what you thought would be a valid sample for this universe. Now you tell me that how many respond to these questionnaires or this sample that you chose is of no importance. It is sort of hard to follow that.

A. Perhaps you read too much into my statement.

What is important is what proportion of the universe of all stock owners of du Pont is represented by the responses that we get. This is important.

Q. Isn't this important in choosing your sample, in the first place?

A. May I finish, please?

Q. Yes.

A. What the actual number of people who responded is, is not important, and the reason that it is not important is that the people and other entities selected for the sample were selected with different probabilities, so that one doesn't attach the same weight to the response or non-response of one individual as of another.

The importance that they carry in the final estimates depends upon the probabilities of selection, so that the proper thing to do is to estimate the proportion of the population, which is or is not represented by responses.

These figures we have presented.

Q. I think I understand what you said, Doctor, but still going back to my initial question—I understand that it isn't necessarily important how many respond to your question-

[fol. 1456] naire; but isn't it important to know how many did not?

A. It is important.

Q. Say, what if only 10 per cent responded, do you think this is of no consequence?

A. It is important to know what proportion of the population is not represented by responses, but it is of no importance to me at all to know merely the number of people who didn't respond.

If the number of people who didn't respond was very

big, but by some quirk in the sample design—which it isn't in this one—this large number of people represented only a small number of shares, then it wouldn't be important that a large number of people hadn't responded.

Q. How do you know what they represented, though? You don't know——

A. I know the weights, you see, the reciprocals of the probabilities of selection associated with those who didn't respond, as well as those who did respond. This is a matter of our record.

Q. Perhaps I am not making myself clear, or perhaps you have already answered. Could you tell, like if 50 per cent respond, or 75 per cent, or could you give me a figure like that? Do you know that?

I am talking about individual stockholders, Doctor Tepping.

A. Yes. Well, if you will refer to Exhibit 24 and to Exhibit 16—now, as I indicated in the direct testimony, Exhibit 24 shows estimates of the beneficial ownership of du Pont common stock by type of owner and number of shares; and this represents the summation of the estimates for shares represented by survey respondents shown in respondents in the scope of the survey shown in Exhibit 21, and those excluded from the scope of the survey, initially.

Now then, if you wish, you can ask what proportion of [fol. 1457] the shares within the scope of the survey—and these figures are shown in these exhibits—what proportion of those shares in the scope of the survey are represented by responses, and the answer to that question is 67.0 per cent.

Q. That wasn't my question, Doctor; my question is, What proportion of the actual questionnaires did you send out and receive responses to?

A. As I explained, this is of no importance to me.

Q. Didn't you keep track by numbers? Why don't you know it?

A. I try to avoid trying to learn things for which I have no use.

Q. Is the answer to my question that you did not keep track by any numbering of the questionnaires, or anything else, which you were getting back?

A. Perhaps you don't understand.

Q. I think my question is a simple one, Doctor.

A. I think there is a difference of opinion on that. One thing that I should make clear is that not every questionnaire that was received by us was recorded in advance by us as having to come back to us.

Now, for example, a bank was selected for the sample. We sent to that bank a copy of Form 2. They filled it out, with a list of their accounts, and returned it to us. We took a sample of those accounts. We then sent out to the accounts that we selected for the sample a blank copy of Form No. 3, as well as a supply of questionnaires, Form No. 6.

Q. Is this referring to beneficial owners?

A. This refers to beneficial owners; that is to say, people who had stock through some account in a bank.

Q. My question was referring to individual stockholders; but proceed.

A. We never had a record of how many completed [fol. 1458] Form 6's we could expect, because it wasn't until we received the Form 3, at least, that we had any indication of how many beneficial owners were represented in that particular block of stock.

Now, it is true that we could have, if we had felt that it was worthwhile spending the time on it, kept a record of the kind you indicate for individual stockholders of record; but even this would have some of these little troubles with it. For example, a person who is an individual stockholder of record is not necessarily the sole beneficial owner of that stock. In fact, he may be the beneficial owner of none of that stock, or of some part of it.

Therefore, to say that we got a response from the stockholder of record is not very meaningful, because that response may merely be a statement that he owns none of it and that it is owned by two other people, to whom then we would have to have questionnaires sent and we would wait for those responses.

It becomes a complicated thing, which is further complicated by the fact that there are variable probabilities of selection. The only meaningful way, it seems to me, of judging the response rate here, is to compare the shares that were represented by responses with the total number

of shares, and this figure is the one I just quoted as being 67.0 per cent.

Q. I suppose you never did analyze who did not respond? Like, was it stockholders, with a small number of shares, or a large number of shares? Did you ever analyze that?

What I was referring to, Doctor Tepping, is, doesn't it seem reasonable to assume that perhaps stockholders who [fol. 1459] were not affected very much taxwise would probably be more reluctant to respond to your questionnaire than somebody that was affected much more, in a higher tax bracket? Did you analyze to see if this situation happened? This would distort the final result, if this happened.

A. I think it was brought out in the direct testimony already that the proportion represented by responses was smaller for the small holders than for the larger ones, in terms of this measure that I have just stated; that is to say, what proportion of the shares in a particular class were represented by responses—that proportion is, in general, smaller for smaller sizes of ownership than for the larger ones.

Q. As to beneficial owners of this stock, which I think you sent questionnaires to the banks and brokers to submit, do you know how many they sent out, how many questionnaires these bankers or brokers sent out of those that you submitted to them?

A. No.

Q. You don't know at all how large this sample was in that regard?

A. The sample size is measured in terms of the number of accounts we selected, and this we know; that once an account was selected for the sample, we wanted information from every one of the beneficial owners of that account, whether it be one or a hundred.

Q. It appears to me, Doctor Tepping, that knowing the size of your sample is of utmost importance as to trying to analyze what the universe consists of. Take in the case of now—stockholders of record, you do not know what proportion of responses you received, you say; and, as far as beneficial owners of stock, you don't even know how many were sent out, is that correct?

A. I think it should be made clear that our estimates of sampling error take the size of the sample into account and take it into account in an automatic way.

[fol. 1460] Q. How is that, Doctor Tepping?

A. How is that?

Q. Yes. Let me say this. Do you know, for instance, whether maybe 90 per cent did not respond to your questionnaires? Do you know whether it was 50 per cent or 90 per cent? Do you have any idea what figure responded?

What if only five responded—could you take that as an accurate sample?

It seems to me like it is important, once you have chosen your initial sample, who responds, whether it is a low number or a high number. When you don't even know the size of your sample, I think you really get into more trouble?

Mr. Gribbon: Is that a question?

Mr. Andrews: That is the point that I have been trying to get across to Dr. Tepping,—that I am bothered with. I will be glad to rephrase the question for him.

By Mr. Andrews:

Q. Isn't it important, Dr. Tepping, that you know the size of your sample, to know what responses you received, whether it is 90 per cent or whether it is only five per cent that responded, or whether 95 per cent responded; or isn't it—well, I will wait with my further question.

A. Isn't it important, you say?

Q. Of the utmost importance? I would go further, yes.

A. Would you——

Q. It is very important. I would ask you, isn't it very important to know what responses you have received from your sample?

A. It is very important to know what responses you receive.

Q. But you don't know, is that correct?

[fol. 1461] A. Yes, I do. The number of responses I received are shown in one of the exhibits.

Q. You know, I think, by these exhibits, what stock was represented by the responses, but you don't really know the responses, is that correct?

A. Exhibit 14 shows the number of responses tabulated,

for example, if you are interested in that. I don't, myself, place very much importance on it.

Q. Then could you tell me what per cent of the stockholders that you sent questionnaires to, responded? That is all my question is. It is that simple.

A. I thought I had explained it—that it is not a simple question, if you want to know what proportion of the 10,576 stockholders to whom we sent the initial inquiry, as shown in Exhibit 7—from what portion of these we received what kind of response, I could probably dig this out, but I don't have that figure here.

Q. As to the stockholders of record, you did not keep track by number or otherwise what questionnaires were sent back, what questionnaires you received?

A. Yes, we certainly did keep track. We had a control file, which enabled us to send follow-ups to those who hadn't responded; but I never made any tabulations of these things.

I have some figures from which such a tabulation as you are describing could apparently—you are apparently describing—could be derived.

Q. But you are not prepared at this point to tell us?

A. I don't have such figures with me, no.

Q. Now as to the beneficial stockholders, as I understand your testimony you don't even know how many questionnaires were sent out by these banks and brokers involved, [fol. 1462] is that correct?

A. No, I don't know the number of forms that the banks sent out; I only know how many shares are represented by the forms that I have received, completed.

Q. Well, then, maybe this is getting at it another way. In the first place, in choosing the number of stockholders that you are going to send your questionnaires to, what was the purpose of that? Why did you worry about every two thousandth one or the amount you sent out, since you weren't worried about the responses you received?

A. Would you like to repeat that question?

Q. You stated that you were not interested or that it doesn't concern you what responses you received.

A. I don't think I said that.

Q. You were concerned?

A. Sure.

Q. But you don't know what response you received, is that correct?

A. I know what response I received in terms of the only measure which is meaningful to me, namely, what proportion of the shares are represented by responses. This is the measure of the response rate which is meaningful to me. It means that I have an estimate which represents 67 per cent of the shares in the whole population, which is the subject of study.

Mr. Cowen: Your Honor, I think we have covered this at least 20 times.

The Court: Yes. I think his last answer should be satisfactory.

By Mr. Andrews:

Q. Now, Doctor Tepping, how does this method of using questionnaires to get this information—how would that compare as to actually going out and interviewing the particular people and noting their sincerity and how they actually answer? Would the interviewing be more accurate [fol. 1463] than sending out a questionnaire?

A. This is a moot question. There are points of view about this. The arguments in favor of a personal interview are that the interviewer can sometimes persuade the respondent to provide an answer when a mailing inquiry would not elicit such an answer. On the other hand, there are people who believe that a reply attained by what is called "self-enumeration" without the intervention of an interviewer, will get more accurate results, particularly if it allows the respondent time to consult his records, which may not be immediately available when the interviewer calls. It is the result of an argument such as this that the present plans for the 1960 census population involves a good deal of this so-called self enumeration, in which the respondent himself fills out a questionnaire, which in this particular case is then later reviewed by the interviewer.

Q. In the matter at hand, which you were trying to determine by this survey, wouldn't the sincerity of the person answering the particular questionnaire be of utmost importance, and couldn't this be observed more readily if this were an interview?

A. In my opinion, this was not a serious problem. We were asking the respondent to transcribe information that he had already recorded in his 1957 income tax return.

Now, it is of course possible that a person feeling—that if he felt that he knew on which side his advantage lay, had the opportunity to falsify his return to us. I don't think this is very likely.

In the first place, I think it would be rather difficult for the ordinary person to do this in a way which would deceive us because of our consistency checks; in the second [fol. 1464] place, I don't believe that many people knew in which direction to bias their response so as to favor what they felt to be their own advantage.

Q. Of course, the covering letter which you sent with them pointed out that it was in connection with litigation on this particular hearing.

A. Yes, it did.

Q. You don't think that makes it clear in which direction?

A. No, I don't think it makes it clear to a taxpayer how he should falsify his report regarding his tax return to us so as to favor or disfavor du Pont, depending upon which side he was on.

Q. You said you had to discard a number—in fact, I think you said several hundred questionnaires because inconsistencies were present.

A. It was actually a small proportion out of the 15,000 we did process.

Q. Would you know what proportion, Doctor?

A. It was, in my judgment, not more than two hundred or three hundred—at, say, the upper limit of that, three hundred out of fifteen thousand is what proportion? I won't guarantee my personal arithmetic.

Q. What was the reason for the inconsistencies? Do you think they were confused by the form?

A. Yes, I think some people were confused by the form. There were some people who were a little careless and who copied the figure from one space when it should have been a space directly above or directly to one side of the one they did copy—that sort of thing, most of these being pretty obvious, since the figures picked up in that fashion

were likely to be quite inconsistent with the other figures reported.

Q. Now the terminology you used, you don't think—I mean, could you have readily picked up these inconsisten-
[fol. 1465] cies, or if a stockholder was confused by the form, was it possible that you used some in which they didn't really understand the question and did not answer?

A. It is possible, but the probability is very low, in my opinion. I think we caught effectively all of the cases in which there was maybe a misunderstanding.

Q. Dr. Tepping, I wonder if you would turn to your Form No. 3? I don't know the du Pont exhibit number. It says, "Beneficial Account Questionnaires."

A. Yes.

Q. Looking under "C", where you say "Nominee", you give a list, such as tax-exempt organizations, a tax-liable corporation, and so forth. Were those terms used clear to—I guess it was the banks and brokers answering this—were they clear in all cases as to what you wanted?

A. Yes, this terminology seemed to be clear to these people.

Q. You do not think this raised any confusion in their minds?

A. No. This, of course, was one of the things we checked in the pretest. These words were chosen on the basis of some conversations with banks and brokers to find out what kind of language would be clear to the prospective respondents.

Q. Now, I think you stated that you asked the various stockholders to copy from their tax forms in filling out your questionnaires. Are these tax forms available for inspection, the original tax forms?

A. They are the standard Form 1040 for 1957.

Q. No. I mean, of course, you do not know the identity of the person who is filling out this particular question-
naire?

A. In some cases we did and in some cases we did not.

Q. Now, I think, Doctor Tepping, in referring to the
[fol. 1466] beneficial owners of stock, you stated that you started out to make three computations. I think one was based on their 1957 returns by these various trusts. If they paid, like 50 per cent, to one beneficial owner, you used

that as a basis. Then you had two other methods that you found you were not able to finish the computations on. Do you recall that?

A. Yes, that is correct.

Q. How important was this that you could only make one out of the three computations? What error was introduced by this?

A. There is no error introduced at all.

An assumption about the distribution of trust needs to be made in order to complete any computation of this kind. This was the only basis of the three that we considered that could, in fact, be carried out because of the fact that such a large proportion of trusts actually did distribute all of their income in 1957, and consequently paid no tax, and therefore made it impossible to compute the tax that would be payable upon additional income that might be retained by the trust corpus.

Q. In the first place, in determining that you were going to make three computations, did you plan on checking them against each other, or what was your purpose? Why did you want three in the first place?

A. The reason we wanted three, well, really the reason was that we were instructed to get these three.

My understanding of the purpose was that it may not be known by a trust officer precisely how he might distribute additional income in the event there was some additional income. It was, therefore, suggested that we obtain this on three different bases.

[fol. 1467] The only basis upon which we were able to complete the computation, however, was the one that assumed the same distribution of additional income as was actually made of income in 1957.

Q. Doctor Tepping, I think you will find in Exhibit 22 or 23—perhaps I have it here—I am referring to the exhibit, I think it was Exhibit 24, in which you estimated the representation of the total class that would be represented by non-responses, is that correct?

A. You are referring to Exhibit 24?

Q. I think it was 24. I thought I had it. Yes, I see Exhibit 24. That is estimated beneficial ownership of du Pont common stock by type of owner and number of shares.

A. Yes. I am sorry, did you ask a question about this exhibit?

Q. This is not the exhibit. I was referring to the exhibit in which, I think, you calculated, you said, by non-statistical methods or estimated by non-statistical methods the representation of the total class which would be represented by the number of responses not received.

A. The non-statistical estimates?

Q. Yes, non-statistical.

A. For example, Exhibit 22?

Q. Yes, that is it.

Now, did I understand that to derive this particular estimation, you based it on the estimate that you received as a result of the responses by some mathematical formula? Is that correct?

Perhaps if you will just tell me briefly how you arrived [fol. 1468] at this estimate, this non-statistical estimate——

A. In my direct testimony I gave a rather detailed description of that.

Briefly, what it amounts to is classifying the responses on the basis of characteristics which are known both for the responses and for the non-responses, and then, essentially, imputing to the non-responses those values which are observed for the responses in the same category found by the classification.

Q. What did you know about any characteristics of the non-responses?

A. We knew, for example, the size of the holding of record. We knew whether the holding of record was that of an individual, a bank, a trust, and so forth.

If the non-responding shares were held by a nominee or a bank, and if the bank had responded to our form number 2, but to no further inquiries, we would know the size of the account, which was taken account of.

If we had had a further response, say, if we had a completed form number 3, this would tell us, for example, about the number of owners and the number of shares held by each owner.

This is the further information that we took account of in the imputation procedure for the non-responses.

Q. Now as to the beneficial owners of stock in which the

banker or the broker sent out the questionnaire, I understood that you did not know the total number of questionnaires that they sent out. How would you know any characteristics of these non-responses?

Like I understand with the individual stockholders, you [fol. 1469] did have the cards there and you could check, but what about those that were sent out by the bank?

A. Perhaps I can illustrate that. Suppose that a given account of a bank or broker contained a hundred shares, that is, a bank whose total number of shares was, perhaps, ten thousand, had one account with a hundred shares, and that this account was selected for the sample.

Now, our procedure for sampling was such in this particular example that we took every thousandth share. We took every thousandth share, and if this particular account had one hundred shares, the probability of selection was therefore a hundred over a thousand, or one-tenth.

Now, having sent a form 3 to the bank, let us say, who was concerned with this account, we would expect now to get completed form 6's, which contain the tax information from a total number of shares of 100.

We might get this response all from one individual, if there was only one owner of all hundred shares in the account, or from half a dozen, if some of these shares were owned by one individual, and some by another, and so forth. So that we knew the number of shares to which a response referred.

Now, suppose we got a response from one of the owners of this account of 100 shares and this owner had 25 shares. Now that 25 shares represents 250, since the weight, as I have already computed it a minute ago, is ten.

The account was selected with the probability of one-tenth and the weight to be applied to any response from that account is, therefore, 10.

You are now getting a particular response for 25 of [fol. 1470] those 100 shares. Whatever characteristics we then compute for those 25 shares are to be multiplied by 10 to represent the appropriate proportion of the universe being studied.

Does that make the procedure clear?

Q. I think so.

Dr. Tepping, did you make any study of the character-

istics of the non-respondents? Did you make any study, as such?

A. Only the statements that I have just made concerning the characteristics of the non-respondents that we knew about.

Q. Now, I think you stated that you had a lot lower response rate on stockholders who were in lower tax groups than those that were in the higher tax groups. How did you take this into account in adjusting your survey?

A. I don't think I made any value adjustment about it being much higher. I think I said it was a lower response rate, as judged in terms of the units that I was using, than for the higher sizes of account.

Now, what was the second part of your question?

Q. My question is, how did you account for this in your final result?

A. The estimates for those shares that are represented by responses don't need to take this into account since we made these estimates separately for each of these classes defined by the size of number of shares owned.

They are taken into account in the sense that if we had had a higher response rate, we would have accounted for more than the 20 million shares or so that we did account for.

If we had had a higher response rate, instead of account-[fol. 1471] ing for 67 per cent of the shares, we might have accounted for 75 per cent of the shares or 90 per cent of the shares.

This is how the response rate affects the result. It would mean that there would be more shares represented by the so-called statistical estimating procedure and fewer shares that would have to be estimated by the non-statistical or judgment procedure that I used for the imputation.

Q. Did you make any study as to what proportion of the total universe is represented by each of these groups that you have mentioned, the stockholders——

A. I don't think I understand the question.

Q. I think you stated that you computed the additional taxes that would be paid by the stockholders by these particular groups separately. I mean, you didn't average them altogether or anything like that?

A. You mean the groups defined by size of holding?

Q. Yes, by size of holding, correct. You did not average those together?

A. We added them together. We did not average them together.

Q. You added them together?

A. Yes, we added the shares represented and the tax to be paid together.

Q. Now, did you make any studies as to what proportion of the total universe or all du Pont stockholders would be represented by each of these groups? In other words, stockholders with 1 to 100 shares. Would this be representative of 20 per cent of the total du Pont stockholders? That is my question.

A. Yes, we have an estimate of those figures, if I understand you. It is in one of these exhibits.

[fol. 1472] Q. Is that——

A. Exhibit 24. The last column of that exhibit shows the estimated proportion of shares in each of the classes listed in the left-hand column.

Q. Doctor Tepping, did your study take into consideration the elimination of 7.8 per cent of the inter-corporate dividend tax that was a total of $10 million in 1957?

A. No. The words are strange to me.

Q. Doctor Tepping, does the information that you obtained permit an estimate to be made on a shareholder basis rather than a share basis?

A. I don't understand the question. Would you rephrase it? What do you mean by "on a shareholder basis"?

Q. I will withdraw it.

Now, toward the end of your direct testimony, Doctor Tepping, I think you testified your sample and errors were determined for the $5.40 income group per year per share of du Pont. I think you did it for various categories and your sampling error relates only to that?

A. The sampling errors that we have presented here relate only to that.

Q. Why did you develop only for that particular group?

A. Well, it is quite a lot of work to compute these figures. Doing it for one price gives a fair impression of the magnitude of their sampling errors. I could compute it for any other price.

Q. Dr. Tepping, are the questionnaires available that you

received as a result of this survey and you used in developing your estimates?

Mr. Gribbon: I might answer that, your Honor. The questionnaires are among the work papers that are available.

[fol. 1473] Mr. Andrews: Did I understand they are among the work papers?

Mr. Gribbon: They are.

By Mr. Andrews:

Q. Can these work papers be made available to us?

A. These questionnaires were obtained from people with a promise that National Analysts would respect the confidence. It is one of the general conditions of conducting surveys that the interviewees or respondents be permitted to speak frankly with assurance that their answers would go no further than the people who need them to process the data.

Q. Dr. Tepping, would it be possible to block out—Is it the particular identity of the individual that you were concerned about?

Mr. Gribbon: Your Honor, I believe we could work out a procedure whereby the questionnaires would be made available without disclosing the relationship between the questionnaire and the identity of the person answering.

The Court: You can discuss that among yourselves.

Mr. Andrews: Well, your Honor, I have no further cross examination at this point.

However, we have not had the work papers made available to us and we would like to have them made available to us and examine them. Then perhaps we will have some more cross examination.

The Court: May they be provided this evening so counsel [fols. 1474-1475] can look at them and the witness be available tomorrow morning in case they wish to ask him some additional questions?

Mr. Gribbon: Yes. They have been available all day.

The Court: Very well. That is the procedure. I think we will adjourn at this time, then.

(Whereupon an adjournment was taken in the trial of the above-captioned cause to Tuesday, March 17, 1959, at 10:00 o'clock, a.m.)

[fol. 1476]

Transcript of Proceedings of March 17, 1959

The Clerk: Case on trial.

The Court: I notice by a transcript of yesterday morning's proceedings that I misspoke in fixing the time for filing the briefs.

When I suggested fifteen days, Mr. Reycraft thought the Government would be pressed. What I had in mind was making it twenty days. Instead, I said fifteen.

So it is understood that you are allowed twenty days, and the same time is allowed to the defendants.

It is also understood that the briefs will be filed alternately. So it will be twenty, twenty, ten and ten.

Mr. Reycraft: Your Honor, before proceeding with Doctor Tepping, I would like to report on what we did last evening.

We had made available to us approximately thirty-six boxes of underlying documents which were used by Doctor Tepping in the preparation of his study.

We were able, working reasonably late, to examine three of these boxes. We do feel that it will be necessary for us to complete further examination, I think at a considerably accelerated rate, before we are able to meaningfully question Doctor Tepping on the underlying data.

We would like, therefore, to defer his cross-examination until such time as we can complete this examination of these underlying data.

The Court: When do you expect that will be?

Mr. Reycraft: I would expect certainly by the end of this week, sir.

[fol. 1477] The Court: Any objection?

Mr. Gribbon: May I just say a few words, your Honor, to dispel any impression there might be that Doctor Tepping's testimony caught the Government by surprise.

A week ago yesterday, in accordance with the pretrial order, we notified the Government that Doctor Tepping would be a witness. The same day we turned over to them

the documents which he would testify with respect to, as well as a very technical explanation of his method that should be understood by mathematicians.

On Tuesday of last week, I took Doctor Tepping down to the Department of Justice and we had a conference there in the afternoon with two economists and three of the Government lawyers simply to expose him to them and give them every opportunity to examine him.

At that time I gave them a list of work papers and said, "If you want anything, let me know." The next thing I heard from them was Saturday morning when they said, "We need everything."

The Court: Do you have any objection to recalling Dr. Tepping at the end of the week?

Mr. Gribbon: Your Honor, no, except I think it should be understood, as it was in the case of Dr. Friend, the Government witness, that the Government should show good cause before he is recalled.

I think it should be a clear case where it is necessary, in order to probe into the validity of his report, that he be recalled.

The Court: Will you explain that, counsel?

Mr. Reycraft: Yes, sir. I think the facts that Mr. Grib- [fol. 1478] bon has related are correct. I think it was Wednesday, rather than Tuesday, that we talked to Dr. Tepping, but that isn't very important.

The important thing is that we did not see the underlying data until last night, and even if it had been made available to us Wednesday or Thursday of last week, to examine thirty-six quite voluminous boxes of documents in this period of time, I think, is quite unfair.

I would like to contrast the fact that we made available the rather detailed study we had made six months in advance. Now, I don't think that it would have been reasonable for us to ask a similar arrangement here because I understand the study was completed only recently.

But, giving due allowance to that fact, I do think in order to do an adequate job, we should be allowed to examine these underlying data.

Mr. Gribbon: We are quite prepared to produce Dr. Tepping again, as long as it is understood it is for a valid purpose and not for just a number of questions such as were asked yesterday afternoon.

Mr. Reycraft: Your Honor, there are a number of matters in these tables which I think are not understandable without reference to the basic data. Frankly, we do not understand many of the underlying tables.

The Court: If he is going to leave the City until then, before he is recalled for cross examination, it may be advisable for one of your associates to confer with him, and maybe he can explain these things to you before he leaves.

Mr. Reycraft: We can do that.

The Court: With that explanation, it may not even be necessary to recall him.

[fol. 1479] Mr. Reycraft: We will be glad to try that, your Honor.

The Court: So let that be the understanding.

Mr. Gribbon: Your Honor, we do have these work papers here. Dr. Tepping will return to Philadelphia. I wonder if moving the papers to Philadelphia might not be a more convenient place to conduct any kind of further examination.

Mr. Reycraft: It would be very inconvenient, sir, to us, because our staff all has to be here.

The Court: Could he remain here for the rest of the day and give the Government the explanation that they would like to have?

Mr. Reycraft: As to the three boxes that would be workable, your Honor, but as to the other boxes, we haven't even had them opened yet, much less examined them.

The Court: With the explanation he will give you during the day, it may be that you will understand the balance without his presence.

Mr. Reycraft: We will be glad to try it, your Honor.

Mr. Gribbon: All right.

The Court: Proceed, please.

Mr. Gribbon: If there is no further cross examination of Dr. Tepping, I have a few questions on redirect examination. Should I proceed with them, your Honor, now?

The Court: Yes, I suggest you conclude your redirect.

Mr. Gribbon: I will call Dr. Tepping to the stand, please.

BENJAMIN J. TEPPING, a witness called on behalf of the defendant E. I. du Pont de Nemours & Company, having [fol. 1480] been previously duly sworn, resumed the stand and testified further as follows:

Redirect examination.

By Mr. Gribbon:

Q. During your cross examination, Doctor Tepping, a couple of matters arose as to which the record may be left in a state of confusion. I would like to attempt to clarify those few matters.

If a higher percentage of responses was obtained from the larger stockholders than the smaller stockholders, what effect would that circumstance have upon the validity of your statistical estimates?

A. It would have no effect on the validity at all; none at all.

Q. Would such a circumstance have any effect upon the sampling error that you have ascertained?

A. Yes, certainly. The sampling errors are a function both of the proportion of owners from whom we received responses and of the number of such owners from whom we received responses.

The higher the response rate the lower the sampling error. This, of course, is all reflected in the computations we have made of the sampling error.

Q. So the net effect would be a reduction in the sampling error that you have estimated?

A. It would be a reduction in the sampling error if there were a higher response rate.

Q. I believe it is Exhibit 20 that shows the sampling error. Would you take Exhibit 20, and by specific reference to one of the figures there, show just what you mean by a reduction in the sampling error? Take the overall effective rate.

A. The exhibit referred to, Exhibit 20, shows that the sampling error of the estimate of the effective tax rates [fol. 1481] for all individuals, which is 57.9, is .4 per cent, which is already pretty small.

If the response rate had been higher that might have been reduced, say, to .3 per cent.

Q. A reduction of the sampling error from four tenths

of one per cent to something less than that would have been the only result?

A. Yes.

Q. You became involved on cross examination in a discussion of judgment sampling, and I believe you stated that even if you had available to you additional information with respect to the, say, tax status of du Pont stockholders, you nonetheless would have used a probability sampling procedure in conducting this survey, rather than judgment sampling.

Will you explain your reason for that conclusion?

A. The principal distinction between judgment sampling and probability sampling is that it is only in probability sampling that one is able to make estimates of the sampling error.

Another distinction, of course, is that it is not possible to say, except with probability sampling, that the results are unbiased.

I feel that the most important difference is that one can estimate the sampling error from the sample itself provided that it is a probability sample. With a judgment sample this is not possible.

Q. I believe you wish to make a correction in an answer you made in the transcript at Page 2506, where in dealing with an example of an account with 100 shares, you said it was selected with the probability of one in ten. What is that correction?

A. That may have been confusing. I intended it merely as an example of the arithmetic that is involved. Actually, [fol. 1482] the probability of selection would have been one in twenty for such a case.

Q. Would it have been feasible for you to have conducted your survey by selecting, say, every seventy-fifth shareholder instead of every two thousandth share of stock, or every one thousandth share of stock in various categories as you did?

A. Certainly it would have, and this kind of sampling would have given valid results and results for which we could compute sampling errors.

The difference between the design that we used and one that would involve selecting, say, every seventy-fifth or every hundredth, whatever the number is, of stockholders, is that the latter would provide estimates with considerably

larger sampling errors or, to say it in perhaps an even more striking way, the cost of obtaining the same procedure would have been much larger.

We would have had to use a sample many times larger, and this would have involved a great deal more work of receiving the questionnaires, processing them, and so forth.

Q. You testified that several hundred questionnaires were returned in such incomplete form that you were unable to verify the accuracy of the information contained therein, is that correct?

A. Yes.

Q. What use did you make of such questionnaires in your estimates?

A. They contributed in no way to the estimates. We simply filed them.

We wrote to the respondent to get the information necessary to complete the questionnaire. If we received such answers, the questionnaire then went into the regular processing.

If we did not, it remained in that pending file, and was not used in the tabulations that we prepared for the tables that have been shown here.

[fol. 1483] Q. By the way, Doctor, what were the general causes of the inaccuracy of the questionnaires you found unusable?

A. One major cause was the fact that certain respondents, who felt they wanted to cooperate in the survey but didn't want to reveal their identities, removed our code number from the face of the questionnaire.

Their removal of the identity of the questionnaire made it impossible for us to use the questionnaire since, of course, we would not then know what weights to assign to such questionnaire.

Other cases were those in which, apparently, certain items had been inadvertently omitted or cases where the respondent had mistakenly copied a number from the wrong space in Form 1040.

These were typical errors.

Q. You have testified that neither the absolute number nor the percentage of computed questionnaires returned for the tabulations is material in determining the validity of your estimate. Would you explain your reason for that assertion?

A. Our estimates were made by receiving a response, calculating the tax for that response and assigning to it a weight which was determined on the basis of the probability of selection.

This weighted number was the contribution to the total figures that we have shown in these tables.

The only effect of the differential response rate as between several classes is that some of the classes may be estimated with smaller sampling errors than others, and this is reflected in our table of the sampling errors.

Q. Now, you have shown, have you not, in the exhibits that you have spoken with respect to the number of shares [fol. 1484] that were included within the scope of the survey that were represented by responses?

A. Yes.

Q. And what is that figure?

A. It is approximately 20 million.

Q. And what percentage of total shares within the scope of the survey does that represent?

A. That is 67 per cent of the shares in the scope of the survey.

Q. Now, how did the fact that you obtained an over-all response representing 60 per cent of the shares, rather than some other percentage, influence your estimate as to the additional tax payable by the owners of the 20,553,000 shares that were represented by responses?

A. The fact that we had a 67 per cent response rate, as measured in the units of which we have spoken, meant that we could estimate the tax for approximately 20 million shares of du Pont stock.

If we had received a higher response rate, we would have been able to estimate that tax for a larger number of shares of du Pont.

If the response rate had been lower, of course, we would have had to confine our statistical estimates to a smaller number of shares of du Pont.

Q. Well, did that percentage rate of response influence in any way the validity or accuracy of your estimate of the tax payable by those shares represented by responses?

A. No, not at all. As I mentioned a moment ago, the sampling error would depend upon what the response rate was, but this was already taken account of and measured properly.

Mr. Gribbon: That is all I have, your Honor.

The Court: Is there any cross?

Mr. Andrews: We have nothing further, your Honor.

[fol. 1485] The Court: You are excused, Doctor.

The Witness: Thank you.

(Witness excused.)

Mr. Gribbon: If the Court please, du Pont calls as its next witness Mr. Ferdinand Christensen.

FERDINAND CHRISTENSEN, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you give your name to the reporter, please?

A. Ferdinand A. Christensen, C-h-r-i-s-t-e-n-s-e-n.

Q. And, Mr. Christensen, if you will speak into that microphone I think it will help a little.

By Mr. Gribbon:

Q. Where do you live?

A. Residence, 5121 Broad Branch Road, Northwest, Washington 8, D. C.

Q. And what is your occupation?

A. I manage our investments.

Q. You manage your investments?

A. Yes, sir.

The Court: Will you keep your voice up, please?

The Witness: Yes, sir.

By Mr. Gribbon:

Q. Are you employed by the du Pont Company in any way?

A. No, sir.

Q. Have you lived all your life in Washington, Mr. Christensen?

A. No, sir.

Q. Where did you live before that?
A. Washington State.
[fol. 1486] Q. And in what business were you engaged in Washington State?
A. Manufacturers' representative.
Q. When did you move to Washington, D. C.?
A. I have been there most of the time since about 1950.
Q. Are you an owner of du Pont common stock?
A. Yes, sir.
Q. How many shares do you own?
A. 200.
Q. Are you married, Mr. Christensen?
A. Yes, sir.
Q. Does your wife own any du Pont shares?
A. Yes, sir.
Q. How many shares does she own?
A. 200.
Q. 200?
A. Yes, sir.
Q. Do you manage investments for any other member of your family?
A. Yes, sir.
Q. Who is that?
A. My mother, Mrs. Ida B. Christensen.
Q. Do you take care of all her financial affairs?
A. Yes, sir.
Q. Does she own any du Pont stock?
A. Yes, sir.
Q. How many shares?
A. 200.
Q. For how long has she owned those shares of du Pont stock?
A. Her original purchase was on May 3rd, 1928.
Q. And she has been an owner of du Pont common continuously since that time?
A. Continuously.
Q. Are you in charge of preparing material for your mother's tax returns?
A. Yes, sir.
Q. Do you know what was the highest tax bracket at [fol. 1487] which you and Mrs. Christensen paid taxes in 1958?

A. In '58 it was 38 per cent.

Q. And do you know what your estimate is for 1959?

A. Our estimate, which has been filed and the first quarter paid, will run 47 per cent.

Q. Looking at your financial and family situation, Mr. Christensen, is there any reason to believe there will be a change upward or downward in the tax bracket that you will be paying, the tax that you will be paying?

A. Barring financial catastrophe or a great reduction in the economic level in the country, we will probably ride right along at about the present level.

Q. That would be at about a 47 per cent Federal income tax bracket?

A. Yes.

Q. Let me put to you a hypothetical situation, Mr. Christensen. Supposing this Court were to adopt the Government proposal and direct the du Pont Company to distribute to its shareholders all of its holdings of General Motors stock in ten equal annual payments over the next ten years, and supposing further that such payments were to be ruled by the Internal Revenue Service as ordinary income to individual stockholders of du Pont— Do you have that hypothetical situation in mind?

A. Yes, sir.

Q. Now, I ask you in those circumstances to confirm some figures that you and I have worked out. I believe that you and your wife, owning 400 shares, would be entitled under the Government plan to receive over the ten-year period 552 shares of General Motors stock; is that correct?

A. Correct.

Q. And if we were to assume further that the General Motors stock you received was valued at $40.00 a share, [fol. 1488] that would represent additional annual income to you in each year of $2208; is that correct?

A. Will you state that last part again?

Q. Receiving 552 shares, assuming General Motors at $40 a share——

A. Yes, sir.

Q. (Continuing) Is it not that the annual addition to your income would be $2208? Have you made that calculation?

A. Twenty-two-o-eight? Do you mean ten-twenty-two? Forty times fifty?

Q. Right.

A. Two thousand and twenty-two.

Q. Right.

A. Oh, yes, sir. I did not hear the two thousand. Yes, sir.

Q. And at a 47 per cent income tax bracket and allowing for the four per cent dividend credit, your annual additional tax on that amount would be $494.44, is that not correct?

A. That is correct, sir.

Q. So you would be faced with paying, you and your wife, an additional income tax of roughly $950 a year?

A. Correct.

Q. On the distribution of the General Motors shares that are allocable to you?

A. Yes, sir.

Q. And your mother would be, on her 200 shares, going through the same calculation—she would be entitled to 27.6 shares of General Motors each year?

A. Correct.

Q. And the additional tax that your mother would be required to pay each year would be about $176, is that correct?

A. Yes, sir.

Q. Have you considered, Mr. Christensen—let us first take your mother's case—what course of action your mother would follow if the hypothetical situation I have put to you came into effect and she were to receive General [fol. 1489] Motors stock as a dividend from du Pont?

A. It would be my decision, I believe, that we would dispose of the GM as it came in.

Q. What would be the reason for that decision, Mr. Christensen?

A. There would be two reasons. The first would be that her income and expenses are pretty well balanced, that is, she is not young and——

Q. How old is your mother?

A. 85; and she requires some goodly amount of care, nursing care, medical care. Rather than pay that tax I think it would probably be the better judgment to sell the stock, sell the GM.

A further reason would be that in the face of such a situation I am strongly inclined to believe that there would be an adverse effect on the price of the GM shares.

Q. So that your decision in the case of your mother's holdings would be to turn the General Motors shares into cash, to sell them?

A. Yes, sir.

Q. Now, looking at your own situation, that is, the situation of you and your wife, have you considered what you and Mrs. Christensen would do with respect to the General Motors shares you would receive on the 400 shares of du Pont that you own?

A. Faced with the same hypothetical situation which you related, I believe it would be our decision to sell both the GM and the du Pont simply because I believe that such an action, such a course, I think, would have a most adverse effect both on the price of du Pont and General Motors, and I would feel that the better course for us would be to step out of it.

Q. You would step out of both General Motors and du Pont?

A. I think I would; yes, sir.

Q. Would that be because you would need the cash to [fol. 1490] pay the taxes?

A. No. We could pay the tax without too much difficulty; but I simply feel that the price would be whipped down by such a course, and I would think it would be better to get out at near present prices, and then possibly at some time later, after a very substantial reduction, it might be that we might want to go back in.

Mr. Gribbon: I have no further questions.

Cross-examination.

By Mr. Reycraft:

Q. Mr. Christensen, have you personally made any study of the market action as a result of any divestiture in this case?

A. Of any—? I couldn't hear you.

Q. Any divestiture of the distribution that Mr. Gribbon was asking about. Have you personally made any such study?

A. When you say whether I have made any study of the divestiture, I have gone over the effect it would have on us as individuals.

Q. Sir, my question was directed to the movement of the market price of the stock, and I assume that inasmuch as you based your opinion in part on that movement, that you had made some independent analysis of it.

A. In this—this situation is one which I do not believe we have ever faced before. In my mind, it appears to me that this is confiscation by taxation.

Now that is my feeling, because, you see, when we bought these shares, we took cash which we had, capital; we invested the cash in du Pont, and we did so for one reason—we knew that we were getting an interest in General Motors right along with it.

Now, then, the proposal, as I understand it, is that we may be given back GM over a 10-year period, and we will get it back in such a way, or at least it is proposed that it [fol. 1491] come back to us in the form of ordinary income; and my feeling is that the burden of owning equity shares is great enough as it is, without this new load being thrown upon us.

Q. Sir, my question was directed to the market price of the stock, and I wonder if you would be able to answer whether you had made any study of the market price of the stock.

A. Well, as to how far down, I wouldn't know how I could determine just how far it would go down. I would say this: that the day-to-day, the short term moves of any security markets are a study in public psychology. How does the public react to a certain situation? And my reaction to this is rather one of great worry.

Now, the long term action of any security or market is based on value. In my mother's instance—now, when she bought her du Pont at $385 a share, it seemed to most people very, very high. It didn't pay a very great deal, but if you look at her basic cost price and compare it with today's price, it looks very, very cheap.

Now, its value—it is simply that that company has grown, and it has paid her a moderate return over the long years.

Q. Are you familiar with the recent price movement of du Pont stock?

A. Yes, sir.

Q. Would you describe what that movement is?

A. Where do you want me to start?

Q. Start with about a year ago.

A. About a year ago—this is just from memory, so you correct me if I am wrong.

It seems to me that du Pont common about a year ago—well, the low over the past three years has been, I think, about 176. Now, just off hand, it seems to me a year ago it [fol. 1492] was riding around 200 or thereabouts. That is my best guess. You undoubtedly have your record right there.

Q. I don't, sir,

Are you familiar with the price today, or yesterday?

A. Yesterday, yes, sir. Yesterday it was off five points at 227½, I believe was the close.

Q. Do you know what it was three weeks ago?

A. Yes, sir, it was about 211, and it ran from 210 or 211 up to—it is two-hundred and forty-some, and I believe I could give you what I believe to be the reason for that rise.

Q. Go ahead, sir, if you have an opinion.

A. I think it was hoped, based on a news article, which I believe came out over the Dow-Jones News Service, that the Justice Department and the Internal Revenue Bureau might be willing to settle for something other than their proposed plan, but that neither of them wanted to openly sponsor such a change; and I believe that hope springs eternal, you know, and I believe that hope sprang in many, many hearts at that time.

Q. Sir, are you familiar with the taxes which du Pont pays on the dividends it receives from General Motors?

A. Yes. They would be subject to a tax on corporate dividends received; yes, sir.

Q. Are you familiar with the amount of that tax?

A. I think it is—I believe, 85 per cent of the dividend that comes from GM can be passed through. I think that there is a tax of about—it ends up, I believe, that the du Pont Company has to pay a tax of seven or eight per cent.

Q. Are you familiar with the approximate dollar amount of that tax over the past several years?

A. Well, I think it runs—if it is about seven to eight per cent on the GM dividend, now GM has been paying [fol. 1493] about $2 a year for the last few years, I believe, so that would be, if it is seven or eight percent there, it would be somewhere from fourteen to sixteen cents a share on GM dividends that has been taken as tax when it comes to du Pont.

I believe that is correct.

Q. Which would be about 10 million dollars a year. Would that be right?

A. When you begin talking about 10 million dollars, you are sort of getting over my head. I generally think in smaller terms than that.

Q. Do you think that would be about accurate, however?

A. Well, 63 million shares, I believe, is the ownership of G.M. shares by du Pont, so if you multiplied 63 million times 14 cents, that would be somewhere, I guess, about 9 million dollars.

Mr. Reycraft: I have nothing further.

Redirect Examination.

By Mr. Gribbon:

Q. Mr. Christensen, the intercorporate dividend tax that Mr. Reycraft called to your attention, I believe you calculated quite rapidly to be about 15 cents a share?

A. Yes, sir.

Q. Have you also calculated how much income tax you are going to have to pay on the value of a General Motors share if it were distributed to you?

A. Yes, sir.

Q. How much would that be?

A. Well, in which instance?

Q. Take the instance of you and your wife, your joint holdings.

A. All right, let's take it on a share basis.

Now, at what price will we figure?

[fol. 1494] Q. Let us assume, to be conservative, today's price. Do you know today's price?

A. Well, yes. At today's price, we will put it. That is pretty good—45½.

Q. Let us take 45½. What would be your tax bracket? I believe it was 47 per cent, is that right?

A. Yes, sir. At 45½, at 47 per cent, we would be paying out, according to this rule—we would have a tax of about $16.50, if I have set my rule at the right place.

No, my error—pardon. My eyes aren't quite—45½ times 47—I had it set at 35. Our tax would be twenty-one dollars and about fifty cents on each share.

Q. You mean you would be paying income tax of $21.50 on each share of General Motors?

A. Yes, sir.

Q. Would you consider that a pretty good trade for the 15 cents a share intercorporate dividend tax that du Pont is paying?

A. Now that $21.50—and we are going to save, on that, 15 cents—now I can assure you that I am interested in any way to increase dividends; but now let's sort of figure we are going to pay $21.50 tax on it, and we are going to have 15 cents' saving per year, so we will find out if that is all gravy.

According to my rule, it would take me one hundred and about forty-two years before I would be even with the board; and therefore, in view of my present age, I think I would decline to take such a deal.

Mr. Gribbon: I have no further questions, your Honor.

Thank you very much, Mr. Christensen.

The Court: Any other recross?

Mr. Reycraft: No sir.

The Court: You are excused.

(Witness excused.)

[fol. 1495] Mr. Gribbon: I will call Mr. Alfred Moran.

Alfred B. Moran, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Would you state your name for the reporter, Mr. Moran?

A. Alfred B. Moran.

Q. Where do you live, Mr. Moran?

A. Detroit, Michigan.

Q. And what is your occupation?

A. Securities salesman, partner in Watling, Lerchen & Company.

Q. You say you are a partner in Watling Company?

A. That is correct, sir.

Q. When did you become a partner, Mr. Moran?

A. January 1, 1958.

Q. Have you ever been employed by the du Pont Company?

A. No, sir.

Q. Or by General Motors?

A. No, sir.

Q. Are you an owner of common stock of the du Pont Company?

A. I am, sir.

Q. How many shares do you own?

A. Jointly, with my wife, 946 shares.

Q. And does your wife own any additional shares of common stock?

A. Singly, in her name, 18 shares.

Q. In what circumstances did you acquire the 946 shares of du Pont common stock which you own?

A. Over a period of years; when I was 21 years of age, when I became an adult, I inherited approximately $5,000 and a small amount of real estate in the Upper Peninsula of Michigan. Gradually, by long-term gains, buying land [fol. 1496] contracts and selling securities, I gradually, commencing in 1952, started buying du Pont stock in sums or multiples of one, two, three shares—sometimes a hundred shares, out of my earnings and what I had built up with original capital which I started with.

Q. I suppose as a stockbroker you have holdings in common shares in lots of companies?

A. No, sir. I own one share of Union Carbide and one share of Hercules Powder. Those are my additional shares.

Q. That is the extent of your holdings in common stocks?

A. That is correct, sir, in securities.

Q. Do you file a joint return with Mrs. Moran?

A. I do, sir.

Q. By the way, what proportion of your income is attributable to the dividend you have been receiving from du Pont shares?

You don't need to give me the precise figure, but if you have a percentage there——

A. Well, last year, to be specific, in 1958, I received from du Pont a total of $5,718, on estimated taxable income, $25,500.

Q. What is the highest tax bracket at which you and Mrs. Moran have been paying Federal income taxes?

A. Estimated by Haskins & Sells, certified public accountants, this year I will be paying a minimum of 43 per cent.

Q. Is there anything in your financial or family situation which would indicate that your tax bracket would change upward or downward in the near future?

A. Depending upon the economic situation, as anybody can predict. Making a general statement, I think my interest in the firm will increase, and over a period of years my taxable income will increase.

[fol. 1497] Q. Which would result in putting you in a higher tax bracket?

A. Naturally in a higher income tax bracket.

Q. Let me put to you a hypothetical situation, Mr. Moran.

If we assume that this court would order the du Pont Company to distribute to its shareholders its entire holdings of General Motors shares over a period of ten years in ten equal annual installments, I believe you have worked out with me the number of shares of General Motors to which you would become entitled upon such a distribution each year, is that correct?

A. That is correct, sir.

Q. To put those figures into the record, on your ownership of 964 shares, taking just that batch of shares, you would be entitled to receive 1313 shares of General Motors, is that correct?

A. That is correct, in a ten-year period.

Q. And if we assume a value of General Motors at $40, you would be receiving each year approximately $5,320?

A. That is correct, assuming a value of $40.

Q. Now if we would assume that that would be taxable at your highest tax bracket of 43 per cent and allow for the four per cent dividend credit, I believe you have computed that the tax you would have to pay each year on that distribution would be $2074.80?

A. That is correct, sir.

Q. Have you considered whether this distribution might put you into a higher tax bracket?

A. Yes, sir: I was working over at the hotel last night. Instead of the 43 per cent bracket, it automatically puts me in the 47 per cent bracket, based on the 1958 figures.

Q. Actually your figure of tax payable would be in excess of the $2,000?

A. I would think so, yes.

Q. Now assume that state of affairs came about, have [fol. 1498] you considered, Mr. Moran, what course of action you would take with respect to the General Motors shares you would receive in this distribution.

A. Yes, sir.

Q. Would you tell us what you have in mind doing?

A. I have finally and reluctantly come to the conclusion that I would every year have to dispose of my General Motors stock.

Now if you care to, I will go into the reasons for it.

Q. Let me see first, you will dispose of all the General Motors shares?

A. That is correct, sir. I would dispose of all the General Motors stock each year.

Q. Now, why would you do that?

A. Well, for three reasons.

Naturally, I would have to raise some money to pay this tax which the Government is proposing. Along with that reason, we are about to have in Michigan very shortly a state income tax in some form or another, and those are dollars, and somehow with the increased cost of living and that fact that as my station of life increases somewhat, I have to have higher costs, sending the children to school, et cetera—that is the first reason.

The second reason is that as we would receive this General Motors, and as I said, I would dispose of it, I can multiply this by many thousands of people, and I think

they would be doing the same thing. So it would be just a question of who could get in the marketplace the first to dispose of the stock because I think naturally it would have a tendency to gradually shrink in value for a good number of years.

Lastly, the thing that disturbed me possibly as much and maybe even more so is the pending antitrust action against General Motors and their subsidiaries.

[fol. 1499] This does not create a good investment climate in that stock. Why buy a security when you have problems pending before you even start out?

Those are my three reasons.

Q. And all those reasons have led you to the conclusion that you would sell off the General Motors shares, is that correct?

A. That is correct, sir.

Mr. Gribbon: I think that is all the questions I have on direct.

Cross-examination.

By Mr. Metzger:

Q. Good morning, Mr. Moran. My name is Gene Metzger, counsel for the Government.

You said, I believe, you started buying du Pont stock in 1952?

A. That is the approximate period.

Q. About what was the price when you started buying it, sir?

A. I don't have my exact figures here, but I started buying it in the 90 level, and I continued on, and I have paid as much as $215 a share for it.

I am a believer in that stock, and I have gradually purchased it without any thought to price.

Q. So what would your average cost run, 150, 125?

A. Making a stab, and this is strictly a stab, I would say between 160 and 170.

Q. With about a $150,000 investment?

A. Sir?

Q. For approximately an investment of about $150,000 over a period of about seven years?

A. That is correct, sir.

Q. Mr. Moran, in talking with Mr. Gribbon, counsel for [fol. 1500] the du Pont Company, you discussed a hypothetical situation, namely, that du Pont would over a period of ten years pass out General Motors stock as a dividend on top of their present normal dividend, and that dividend would be taxable at ordinary income rates.

Now, I assume that your answers to Mr. Gribbon were based upon a belief that each of those assumptions would be a fact, is that correct? In other words, when you said, I have made a decision that in this event, I would do thus and so, that was based on each item of that hypothesis?

A. Well, somehow I have to raise some money, and this is one way I have decided. That is the final decision that I will have to do it.

Q. Now, suppose one or more items of that hypothesis change? Suppose that the dividend was not paid out on top, but perhaps partly in addition to the present dividend and partly in substitution therefor, so that any tax you might pay would be, the increment tax would be reduced, or, say, it were all paid out in that, or, let us say, that this dividend were not taxable as ordinary income.

With any one of these changes, what effect might that have on your decision?

Mr. Gribbon: If your Honor please, I think counsel had better give the witness one at a time. It is a little bit confusing.

Mr. Metzger: If the Court please, I am not attempting to let this witness make a decision on the spur of the moment. I am merely trying to point out that there are various things, and whether he has considered them.

The Court: Your question is pretty long, counsel.

Mr. Metzger: All right.

[fol. 1501] By Mr. Metzger:

Q. Changing any of these hypotheses or several of them, have you made any decision as to what you would do in that circumstance?

A. Of course, I think before anybody could make any decision, he has to see the facts presented to him.

As I see it, you were just making a couple of statements, and I couldn't give you a decision because I don't know what changes are proposed, so I would have to wait until they come out actually with the changes to make my mind up at that time.

Q. Then it is your conception at the present time that any other hypothesis would be a changed hypothesis?

In other words, the hypothesis that was developed by Mr. Gribbon with you is your belief as to what would happen as a result of this case if the Government succeeds in getting its decree?

A. Well, as I understand it, I mean if this thing goes through, if the Government is proposing that, that is the decision I have made, and made it after a great deal of thought, not only from a personal standpoint, which is what I am talking, incidentally, but also from being in the business and seeing what has happened in the past with similar cases, or something similar.

Q. I am interested, sir, in how you reach the assumption that the dividend would be paid out on top of the present dividend? Would you mind telling us how you reached that conclusion?

A. Well, as you know, if I am—I know I am correct in this, that General Motors passes on to their stockholders $2, and which du Pont in turn passes on, a great majority of it, to the du Pont stockholders.

So, of course, as you are gradually paying out this Gen- [fol. 1502] eral Motors stock, your dividends from General Motors to du Pont are going to increase proportionately.

Q. That is right?

A. Correct.

Q. So how does that make you reach the conclusion you have reached that this stock dividend would be on top of the ordinary dividend? Wouldn't that make you reach a contrary decision, namely——

A. No, sir, because I am faced with the fact of paying taxes and this is a decision that if it goes through, I am going to have to raise some money, period. I am going to have to sell some stock. There is no other decision as far as I am concerned.

Q. You still, sir, say that you reached this on a conclusion that you are going to have to pay an extra amount in taxes, more than you are paying now, is that correct?

A. That is correct.

Q. And that that extra amount you have computed you will have to pay is the amount of the dividend in General Motors each year, is that correct?

A. That is correct.

Q. Now, what led you to reach the conclusion that that would be the amount of extra dividend received?

A. Well, frankly, I don't understand your question. I don't understand.

Q. All right, sir. You stated that you would have to pay more money, and you have even calculated that your tax bracket would go up a specific amount in the event of distribution?

A. That is correct.

Q. What led you to conclude that this distribution would be in addition to normal dividends paid by du Pont?

A. Well, as I understand it, that is what they are proposing, the Government is proposing. This money, or this General Motors that you are going to receive, you are [fol. 1503] naturally going to have to pay an ordinary income tax on that amount. That is, up to now.

Q. That wasn't the Government proposal, but I don't think it is particularly important. Just one more question, before we close.

I am curious, sir, as to how you were selected as a witness in this hearing?

A. Well, I think that answe is obvious. When you have, as I have, a big stake, from my point of view, a personal stake, in this security, you are naturally going to be interested in looking after yourself, looking after your family, I might say.

Q. Then you volunteered to appear in this hearing?

A. About a year ago, when I first understood the impact of this proposal, frankly, I wrote the company and mentioned the fact that I was very disturbed, and naturally being a stockholder in the company, I volunteered any way which I could to help myself and help the company.

Mr. Metzger: Thank you, sir. That is all.

Mr. Gribbon: Just one minute, Mr. Moran.

Redirect Examination.

By Mr. Gribbon:

Q. I think Mr. Metzger has got a point here which perhaps he didn't get across, and I would like to help him out on it.

I think he suggested to you that instead of receiving an additional amount in General Motors stock over and above the normal cash dividend that du Pont has been paying, that perhaps the Government would try to develop a decree which would have du Pont pay you, instead of the cash dividend that you have been receiving each year, pay you General Motors shares so that you would receive in the [fol. 1504] mail, instead of the approximately $5700.00 in cash that you have been receiving, the shares of General Motors——

Mr. Metzger: If it please the Court, the questions I asked the witness are in the record and the answers are also in the record. If Counsel wishes to ask some questions to change the point, I wish he wouldn't refer to them as correcting postulates that I brought up. I asked the witness what his hypothesis was, and no more.

The Court: You will have an opportunity to ask further questions on recross, if you wish.

By Mr. Gribbon:

Q. Are you with me so far?

A. Yes, sir.

Q. (Continuing) Instead of receiving, I think you said about $5700.00 in cash.

A. That is correct.

Q. (Continuing) You will get in the mail shares of General Motors.

A. That is correct.

Q. So that your income wouldn't be increased, but instead of getting it in the form of cash, you will get it in the form of shares of General Motors stock?

A. That is right.

Q. I think you testified that your dividends from du Pont represent about 15 per cent of your total income, is that right?

A. That is right, sir.

Q. Now think about that. What course of action would you follow if you would receive, instead of cash dividends from du Pont shares of General Motors?

A. Well, in other words, under that hypothesis, I wouldn't be receiving any cash dividends from du Pont?

Q. Let's assume that, yes.

[fol. 1505] A. Well, I bought this stock originally, and I think many other thousands of stockholders did, principally as a growth, semi-income stock. So then I would be foregoing my cash dividend, is that correct?

Q. Yes, you would be receiving shares of General Motors instead of cash.

A. That is right.

Q. What would you do with those shares of General Motors?

A. Naturally, if I bought the stock for dividend purposes, long-time growth, I would have to raise some money. I would have to sell some of the G.M.

Q. Would you sell as much as you would if you received it on top of the dividend?

A. I think I would, sir.

Mr. Gribbon: That is all the questions I have.

Mr. Metzger: No further questions.

The Court: You are excused.

Mr. Gribbon: Thank you, Mr. Moran.

(Witness excused.)

C. E. Holland, a witness called in behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, please?

A. My name is C. E. Holland, H-o-l-l-a-n-d.

Q. Where is your home, Mr. Holland?

A. Beaumont, Texas.

Q. Have you always lived in Beaumont?

A. Well, I lived in Houston for ten or twelve years.

Q. Have you ever been employed by the du Pont Company?

A. No, sir.

Q. Or by General Motors?

A. No, sir.

Q. What is your occupation?

A. I am in the insurance business, general insurance business.

[fol. 1506] In Beaumont?

A. Yes.

Q. Do you have your own firm or business?

A. Yes, sir.

Q. Are you an owner of du Pont common stock?

A. Yes, sir.

Q. How many shares do you own?

A. I have one hundred shares.

Q. How long have you been an owner of du Pont common?

A. Since 1950, I believe.

Q. Are you married?

A. Yes, I am.

Q. And does your wife own any du Pont common?

A. Yes, she does.

Q. How many shares?

A. One hundred fifty.

Q. Do you own any General Motors shares?

A. No, sir, I do not.

Q. Does Mrs. Holland own any General Motors shares?

A. Yes, she does.

Q. How many?

A. Six hundred thirty.

Q. Of the common stock of General Motors?

A. Yes.

Q. Did you ever own any shares of General Motors?

A. Yes, sir, I did.

Q. You have sold them?

A. Yes, sir.

Q. When did you sell them?

A. Last spring, '58.

Q. How many shares did you sell at that time?

A. One hunded fifty-nine.

Q. That constituted your entire holdings of General Motors?

A. Yes.

Q. Can you tell us why you sold your shares last spring?

A. Well, it occurred to me with all of the litigation brewing, and that, that we had too much in these two companies [fol. 1507] and that particular one hundred fifty-nine

shares had a higher cost where there would be less capital gains tax involved. So I sold it.

Q. You liquidated your holdings in General Motors?

A. To get some of my money back.

Q. Do you and Mrs. Holland file a joint return?

A. Yes.

Q. And what was the highest tax bracket at which you paid Federal income taxes in 1957.

A. 59 per cent.

Q. 59 per cent?

A. (Witness nodding head.)

Q. Are there any factors in your personal financial situation that would indicate that your tax bracket would change in the next several years?

A. Well, I am optimistic enough to hope that it will get worse.

Q. To hope your tax bracket will get worse or your economic situation?

A. That my income will go up.

Q. Specifically, are there any factors in your picture that lead you to believe that?

A. Yes. My wife has an estate in which she is—do you call it the remainder?

Q. That is fine.

A. In other words, her father left his estate to her mother; I mean, his estate to my wife, with the income to go to the mother.

Q. For her life?

A. For her life.

Q. Yes.

A. She is 82. In that estate is 100 shares of du Pont which has not been mentioned.

Q. So that Mrs. Holland has a remainder interest in 100 additional shares of du Pont?

A. If her mother dies she will get an additional 100 shares. Well, really, it is hers now under the will, but she just does not get the income from it.

Q. Right.

A. But we would have, of possibly one thousand dollars [fol. 1508] a month additional income immediately from that estate.

Q. So that the 59 per cent tax bracket that you are now

struggling with is sort of rock bottom in your case?

A. I think so.

Q. Let me put a hypothetical situation to you, Mr. Holland, and ask you to consider what you would do.

Supposing the Court were to order the du Pont Company to distribute its holdings in General Motors shares to its stockholders over the next ten years in ten annual equal installments.

You have computed with me, I believe, the number of shares of General Motors to which you and Mrs. Holland would be entitled on the basis of your combined holdings of 250 shares of du Pont stock?

A. Yes, sir.

Q. And I believe that if we assumed General Motors to be worth, or to be valued at the time of the distribution, at $40 a share, you and Mrs. Holland would receive $1,380 worth of General Motors shares each year?

A. That is correct.

Q. And if we assumed your rock bottom tax bracket of 59 per cent, with an allowance for dividend credit, I believe you have computed that you would have to pay a Federal income tax of $761 on that $1,380 worth of General Motors you would receive?

A. That is correct, for ten years.

Q. Over each year for ten years. Have you considered, Mr. Holland, what course of action you would follow in the event that such an order as I have described were entered, and assuming further that the distributions would be taxed to individual shareholders at ordinary income tax rates?

A. Well, I have thought about quite a bit but I have [fol. 1509] not arrived at any real definite decision. I feel that I would have to wait and see just what the facts are and the circumstances at the time.

The best course for us to follow, from what I know now, I believe, would be to give that stock to our children and let them pay the tax, which they would be in a lower bracket. Our course, we are trapped again on that because we have already used up our lifetime exemptions, so we would have to pay gift tax on the du Pont or string out the gift into the ten-year distribution period.

I just do not know how it would work out. I cannot use a slide rule.

Q. If you were to give the shares to your children you would have a gift tax to pay, you say?

A. Yes, sir.

Q. And they also would have to pay a tax on the income?

A. Yes.

Q. I take it they are in a lower tax bracket?

A. That's right. That would have the effect of cutting down the amount of tax.

Q. You say you have not settled on that as a course of action, have you?

A. No, sir, I have not.

Q. Do you find that a very happy solution to your problem?

A. Well, it is always easier to give something away than it is to get it back, but that appears to me to be the best solution.

Mr. Gribbon: I have no further questions.

Mr. Reycraft: No questions.

The Court: No cross? All right, you are excused.

(Witness excused.)

Mr. Gribbon: I call Mrs. Susanna Bedell.

[fol. 1510] Susanna E. Bedell, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having first been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, please, Mrs. Bedell?

A. My name is Susanna Eszenyi Bedell, E-s-z-e-n-y-i, B-e-d-e-l-l, Mrs. Wallace C.

Q. And where do you live, Mrs. Bedell?

A. I live in Poughkeepsie, New York.

Q. And what is your occupation?

A. I am a housewife now.

Q. What is your husband's occupation?

A. He is a surgeon?

Q. Do you have any children?

A. Yes. I have two.

Q. Have you ever been employed by the du Pont Company or by General Motors?

A. No.

Q. Are you a stockholder of the du Pont Company?

A. Yes, I am.

Q. How many shares of du Pont stock do you own?

A. I now own 15 shares.

Q. Under what circumstances did you acquire those fifteen shares of du Pont stock?

A. Gradually. I bought five shares in '56 and on my request my husband gave me two shares for Christmas in '57. Then I got eight additional shares in '58.

Q. Do you own General Motors common stock?

A. Yes, I do.

[fol. 1511] Q. How many shares in General Motors do you own?

A. Thirty-three.

Q. Now, Mrs. Bedell, supposing hypothetically that the Court were to enter an order in this case requiring the du Pont Company to distribute to its shareholders the General Motors shares which the du Pont Company owns and to distribute them in equal annual payments over a 10-year period, and that the taxation authorities ruled that such distribution be regarded as ordinary income to individual shareholders of du Pont.

With those assumptions in mind, I believe you have computed the number of shares of General Motors stock to which you would be entitled.

A. Yes, I have.

Q. With respect to your 15 shares of du Pont; is that correct?

A. That is correct.

Q. And you have computed that you would be entitled to 20.7 shares?

A. That is right, over a period of——

Q. Ten years?

A. Ten years.

Q. Do you and your husband file a joint Federal income tax return?

A. Yes, we do.

Q. And what is the highest tax bracket in which you have been paying taxes in recent years?

A. Well, I do not know. In 1957, which is the last return --for 1957, the last return, I computed we were in the 30 per cent bracket.

Q. And would you anticipate that your income tax bracket would be lower or higher in the next several years?

A. Higher.

Q. Have you computed the tax that would be payable by you each year upon a distribution of the General Motors shares attributable to your 15 shares of du Pont stock?

A. Yes, I have.

Q. And I believe that figure comes, after allowance for [fol. 1512] credit, to $21.52 a year?

A. That is about right.

Q. Is that correct?

A. Yes, twenty-one. That is right.

Q. Now, Mrs. Bedell, have you considered what course of action you would follow with respect to the General Motors shares which you would be receiving upon the distribution I have described in my hypothetical question?

A. Yes.

Q. Could you tell us what course of action you would follow?

A. Well, I would keep my General Motors.

Q. Have you considered whether it would be advisable to sell General Motors or sell your du Pont?

A. Well, since I do not believe this will be decided according to the hypothetical, I do not think it will be necessary for me to sell General Motors. It would be unfair.

Q. What do you mean it would be unfair?

A. Your hypothetical, if it were true, would be unfair.

Q. How is that?

A. Oh, in many ways.

Q. Well, could you explain to the Judge what you have in mind?

A. Yes. I come from Central Europe originally and this is a place where I can invest the way I want to invest, and I have decided that I would like to have a certain proportion of my holdings, which are very modest, and I do not want anyone else to change the proportion of my holdings.

I also do not like to pay $21.00 a year additional tax

for which I do not get anything, because my equity is in the du Pont right now.

Q. So, nonetheless, you feel you would not have to sell your General Motors?

A. No, I would not have to sell. The amount is too small. I would not have to sell.

[fol. 1513] Mr. Gribbon: I have no further questions, your Honor.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

The Court: The Court stands recessed for ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had:).

Mr. Gribbon: If the Court please, Mr. Ragland will examine the next three or four witnesses.

Mr. Ragland: My name is George Ragland. Your Honor, the next several witnesses are all stockholder employees of the du Pont Company, and they are all from the East Chicago, Indiana plant.

I would like to call first Mr. William Schwenke.

William F. Schwenke, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ragland:

Q. Mr. Schwenke, will you state your name and spell it for the reporter, please?

A. William F. Schwenke, S-c-h-w-e-n-k-e.

Q. Where do you reside?

A. Rural Route 1, Box 36, Schererville, Indiana.

Q. What is your occupation, please?

A. I am a supervisor at the du Pont plant in East Chicago.

[fol. 1514] Q. How long have you been there?

A. I will be there 40 years in August.

Q. Have you ever worked for any other company?

A. Not for any length of time; just during vacations.

Q. Do any other members of your family work for the company?

A. Presently not now. My father did when it was the Grasselli Chemical Company, and my brother did up to, I think, four years ago. He is now on pension.

Q. I believe you told me that you were born on company property, is that correct?

A. I was born on company property.

Q. Do you own any shares of the common stock of du Pont?

A. I do. My wife and own, jointly, 108 shares. I own by myself 19.

Is that right? No that is not right.

Twenty three. It was 19; now it is 23.

Q. It is a total of 131 shares?

A. 131 total.

Q. How did you acquire that stock? Did you purchase it, or just how did you get it?

A. I received all but one share by the Bonus Plan, and the one share by the Thrift Plan of the du Pont Company.

Q. Did all of the stock come to you at once, or did you get it over the years?

A. I got it over the years, I believe, starting in 1946.

Q. Have you sold any of your du Pont stock?

A. None of this.

Q. You said "None of this." Will you explain a little further, please?

A. Previously, years ago, we had another plan, whereby, I believe, we called it "Preferred Stock." We could buy preferred stock; and I sold that in order to buy a home.

[fol. 1515] Q. Do you mind telling us what income bracket you are in for Federal income tax purposes at present?

A. For the year 1958, 26 per cent.

Q. Are you acquainted with the plan of the proposed judgment which the Government has filed in this case?

A. Moderately, as I read it in the newspapers.

Q. You know, do you not, Mr. Schwenke, that under that plan, for each of the du Pont shares that would be distributed under that plan to the owner, approximately 1.38

shares of General Motors common stock over a ten-year period would be distribtued?

A. Yes.

Q. Do you know that the Internal Revenue Service has ruled that receipt by you is taxable as ordinary income?

A. I do.

Q. I have made a few computations, and I will ask you to bear with me, Mr. Schwenke, on them, to shorten this.

On the basis of your ownership of 131 shares of du Pont stock, I estimate that you would receive approximately a little over 180 shares over the ten years?

A. That is correct.

Q. That is 18 shares a year, is it not?

A. That is right.

Q. Assuming that at the time you received these General Motors shares, they would each have a value of $40.00 a share, my computations indicate that you would receive each year taxable income of $720.00?

A. That is about right.

Q. Applying your 26 per cent rate, your 26 per cent tax rate, about which you have testified, you would be required, as I compute it, to pay a tax of $187.00 a year for each of the ten years?

A. That is right.

Q. Under these circumstances, would you mind telling [fol. 1516] the Court just exactly, in your own words, what you would do with that stock that you get? Would you keep it, would you sell it, or what would you do?

A. Well, I would have to sell it, because I have, during my entire life, lived at a moderate income. By that, I mean I have saved here and there, held insurances, and things like that, so that when retirement comes I will not have to drop too severely in my standard of living; and therefore my income and outgo are pretty well balanced, and on anything like this I would require additional cash and would have to sell the stock.

Q. One following question. What have you done with the dividends that you have received over the years on this du Pont stock? Would you tell us what you have done with them?

A. I have used those toward the education of my four children and the payment of my home, and living expenses.

Mr. Ragland: That is all. You may cross examine.
Mr. Reycraft: No questions.
The Court: You are excused.

(Witness excused.)

Mr. Ragland: I would next like to call Mr. Roscoe.

HAROLD A. ROSCOE, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ragland:

Q. Mr. Roscoe, will you state your name for the reporter and spell it, please?
A. My name is Harold A. Roscoe, R-o-s-c-o-e.
Q. Where do you live?
A. I live at 8832 Waymond Street, Highland, Indiana.
[fol. 1517] Q. What is your work, please?
A. I am an engineer.
Q. What company are you with?
A. I work for the du Pont Company, in East Chicago.
Q. How long have you been with du Pont?
A. I started working for du Pont March 15, 1949.
Q. Had you just graduated, or had you been with another company before that?
A. I had just completed my education at the University of Michigan.
Q. Is that where you got your engineering degree?
A. No, sir, I received my engineering degree from the Michigan College of Mining and Technology in Houghton, Michigan in 1943.
Q. What did you take at the University of Michigan?
A. Business administration.
Q. Did you get your degree in that?
A. Yes, I received a Master's degree in business administration in January of 1949.
Q. You are an engineer at the present time?
A. That is correct, sir.

Q. What kind of engineering—mechanical, civil, chemical?

A. I am a mechanical engineer. However, my present assignment is concerned with construction and maintenance of plant equipment at the East Chicago plant.

Q. Do you own any shares of common stock of du Pont?

A. Yes, I do.

Q. How many?

A. 41.

Q. How did you get these?

A. I received the stock through the "B" Bonus Plan and through the Thrift Plan.

Q. When did you first receive your bonus stock, if you [fol. 1518] remember?

A. After I completed three years of service. About March of 1953, as I recall.

Q. Will you state what your top bracket is for income tax purposes?

A. Currently, it is 26 per cent.

Q. Do you expect any changes in that bracket in the reasonably near future—in the next ten years?

A. Yes, sir, I expect to progress, and of course earn more money.

Q. How many children have you?

A. I have two children.

Q. What are their ages?

A. I have a girl ten, and a boy seven.

Q. You understand, generally, about the Government's proposal in this case, do you not?

A. Yes. I read some of the case in the paper.

Q. You understand for each of the shares of du Pont stock that you have, you would get, spread over a ten-year period, approximately 1.38 shares of General Motors stock. Is that your understanding?

A. Yes, I understand that.

Q. If you will let me calculate this now and see if that confirms, as I think it does, it will shorten it.

I calculate that you will receive approximately 565 shares of General Motors stock at approximately 56 shares each year. Does that accord with your computation?

A. No, sir.

Q. Maybe I have it wrong. Please state the fact.

A. I think it would be much closer to 56. Perhaps you lost a decimal point.

Q. I thought I said "56 a year." I may have misspoken, I am sorry. I do have 56 in my notes.

You understand also that what you receive would, under the ruling of the Internal Revenue Service, be taxable to you as ordinary income?

A. Yes, I understand that.

[fol. 1519] Q. Assuming that these 56 shares of General Motors stock which are distributed to you have a market value of $40 per share when you receive them, then applying your income tax rate of 26 per cent, your total tax, as I compute it, would be $576 or approximately $57.00 for each of the ten years involved?

A. Yes.

Q. Under these circumstances, would you tell the Court just what you would do with your General Motors stock? Would you sell it, would you keep it? Tell us in your own words.

A. I would keep my General Motors stock.

Now all of my stock I consider as a trust fund for my children's education. Both my wife and myself have no intention whatsoever of ever selling it. I am not a market trader, I know very little of the stock market, and therefore I would keep any stock that I received.

Q. Have you ever sold any of the du Pont stock that you have received?

A. No, I have not.

Q. Do you own any other securities except this stock?

A. No, I own no other securities.

Q. One final question. What have you done with the dividends that you have received?

A. Currently the dividends are earmarked for my wife and my children. They use it for purchasing clothing. If there is any left, it goes into our general household expense account.

Mr. Ragland: I believe that is all. You may cross-examine.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Ragland: I would next like to call Mr. Govert.

[fol. 1520] RAYMOND J. GOVERT, called as a witness on behalf of the defendant E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Ragland:

Q. Will you state and spell your name, please?
A. My name is Raymond J. Govert, G-o-v-e-r-t.
Q. What is your address, please?
A. My address is 318 Lafayette Street, Griffith, Indiana.
Q. What is your occupation?
A. I work for the du Pont Company at East Chicago as Assistant Plant Control Superintendent.
Q. How long have you been with the company?
A. Thirty-two years.
Q. At the same address?
A. Yes, sir.
Q. As Assistant Plant Control Superintendent, what is the general nature of your duties?
A. Cost accounting.
Q. Cost accounting?
A. Yes.
Q. How many, if any, shares of du Pont do you own?
A. I have 62 shares.
Q. Does that include or exclude the shares that you have just recently received?
A. That includes the shares I just recently received.
Q. So it is sixty-two, all told?
A. That is right.
Q. How did you acquire these shares? Did you buy them or did you receive them——
A. I received them through the "B" Bonus Plan and the Thrift Plan.
Q. All at once?
A. No, I received them, I believe, starting in 1950 and spread out throughout the years.

Q. Will you mind telling us what your tax bracket, [fol. 1521] your highest bracket for Federal income taxes is?

A. 22 per cent.

Q. Do you have a general acquaintance with the Government's proposed judgment in this case?

A. I have a general acquaintance, yes, sir.

Q. You know that under that proposal each of the du Pont shareholders would receive approximately 1.38 shares of General Motors stock?

A. That is right.

Q. Spread over a ten-year period?

A. Yes, sir.

Q. My calculations, Mr. Govert, are that you would receive approximately 85 shares.

A. That is about right.

Q. And at an assumed value of $40.00 a share, that would be approximately $3400.00?

A. Right.

Q. For the ten years?

A. Yes, sir.

Q. For each of the years, you would receive approximately $75—I am sorry—you would receive approximately $340.00?

A. Yes, that is right.

Q. Since you have testified that you are in the 22 per cent bracket, your tax on that amount would be approximately $75.00 a year, would it not?

A. That is right.

Q. Under these circumstances, would you tell the Court what you would do with your stock if you received it?

A. I would keep the stock and pay the tax.

Q. Why?

A. I find the stock valuable in meeting my expenses, educating my children, and it has been one means of building up an equity to supplement my income when I retire. I would be able then to keep the stock. I would want to keep the stock.

Q. How many children do you have? You said raising and educating your children.

A. I have at the present time four dependent children.

[fol. 1522] Q. Have you some grown children?

A. I have two grown children. One is teaching, and one boy is studying at the North American College in Rome.

Q. What have you been doing with the dividends on the stock that you have received?

A. I have been using the dividends to meet the expenses of educating my children.

Mr. Ragland: That is all.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Ragland: Finally, I would like to call Mr. Wallner.

NORMAN R. WALLNER, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ragland:

Q. Mr. Wallner, would you state and spell your name, please?

A. Norman R. Wallner, W-a-l-l-n-e-r.

Q. Where do you live, Mr. Wallner?

A. I live at 17835 Williams Street, Lansing, Illinois.

Q. What is your work?

A. I am a chemical engineer with the same East Chicago Plant of du Pont.

Q. When did you start?

A. I started with du Pont June 14, 1948.

Q. Had you ever been employed by any other company before that?

A. No, sir, I had not, not in full time employment.

Q. Were you just out of school?

A. Yes, sir, I was.

Q. Where did you go to school?

A. I went to school at the Alabama Polytechnic Institute at Auburn, Alabama.

[fol. 1523] Q. Do you own any shares of du Pont?

A. Yes, sir.

Q. How many?

A. Thirty shares.

Q. Where did you get them?

A. I received 29 shares over a period of five years from the "B" Bonus Plan and one share via the Thrift Plan.

Q. Do you own any other securities other than du Pont?

A. No common stocks. I own some Government bonds.

Q. Would you mind stating what your tax bracket is, your highest tax bracket?

A. 22 per cent.

Q. How many deductions do you have?

A. I have three dependents in addition to myself; four exemptions total.

Q. Two children and your wife?

A. That is right, two children.

Q. How old are the children?

A. My boy is four and my girl two.

Q. Do you expect any change in your tax bracket in the next few years?

A. Yes, sir. I hope so. With the continued success of the company and depending on my own initiative and my own ability, I hope to get into the 26 per cent bracket.

Q. Are you acquainted with the Government's proposal.

A. Yes, sir, I am.

Q. Is it, as far as we are concerned here, that you would receive as a du Pont stockholder for each share of stock, roughly, 1.38 shares of General Motors stock spread over a 10-year period. Is that your understanding?

A. Yes, sir, I understand that.

Q. My computation, to make it short, is that you would receive a little over 40 shares over the 10-year period.

A. That is correct, sir.

Q. Or four shares a year.

A. That is right, sir.

Q. And you know that under the Internal Revenue [fol. 1524] Service ruling, you would be taxed as if it were ordinary income?

A. That is correct.

Q. Assuming that the General Motors stock at the time you received it, had a market value of $40 a share, then, according to my computation, you would receive a market

value—you would add to your taxable income $160 for each of the ten years. Is that your understanding?

A. That is correct.

Q. Carrying this computation one step further, based on your tax bracket of 22 per cent, my figures indicate that you would have to pay an additional tax of slightly over $35 a year each of the 10-year period.

A. That is right.

Q. Would you tell the Court under these circumstances just what you would do with that stock?

A. I would plan to retain both my General Motors stock and my du Pont stock.

Q. Why?

A. Well, my reasons for retaining the stock are these: Within the next few months I am purchasing a new home, and into this new home I will put all the money I have available from all sources, my Government bonds, my equity in my present home, and any cash I might possess, and this stock will be my sole nest egg or my sole emergency reserve.

I do not plan to sell the stock. I plan to pay the tax, and I expect the stock will go down and that I will hold on to it with the hope that it will eventually come back up, and I will maintain my same equity. So I am holding it for reserve.

If I don't need it for emergency purposes, for my family, I plan to hold on to it for the education of my children, and eventually retirement, which I am striving for at age 60.

[fol. 1525] Q. Finally, Mr. Wallner, I have been asking the other du Pont employee stockholders what they have been doing with their dividends that they have received for each of the years. What have you been doing?

A. I do not spend any of the money from my dividends. The money is set aside strictly for capital purposes, and I am planning to use this money in the purchase of my new home.

Mr. Ragland: Thank you.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Gribbon: We will call Mr. Payte.

HENRY L. PAYTE, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, Mr. Payte?
A. Henry L. Payte.
Q. Where do you live, Mr. Payte?
A. Jersey City, New Jersey.
Q. Where are you employed?
A. In New York with American Radiator and Standard Sanitary Corporation.
Q. American Radiator and Standard Sanitary Corporation?
A. Yes, sir.
Q. Have you ever been employed by the du Pont Company?
A. No, sir.
Q. Or by General Motors?
A. No, sir.
Q. For how long have you been employed by American Standard and Radiator Company?
A. Since November 1st, 1927.
[fol. 1526] Q. You have been continuously employed since that time?
A. Yes.
Q. What line of work are you in with American Standard Company?
A. I am in the tax department, tax counsel's office.
Q. Are you a Certified Public Accountant?
A. Yes, sir, I am.
Q. Are you an owner of du Pont common stock, Mr. Payte?
A. Yes, I am.
Q. How many shares of du Pont common do you own?
A. 40.
Q. Do you own any General Motors shares?
A. Yes, I do.
Q. How many shares?
A. My wife and I together have 341 shares.
Q. Do you file a joint return with your wife?

A. Yes.

Q. In what income tax bracket did your last income fall?

A. 30 per cent.

Q. Is there anything in your personal situation that would affect that tax bracket in the near future?

A. Yes.

Q. What is that?

A. I am scheduled to retire on November 1st.

Q. Of this year?

A. This year.

Q. Are you going to retire?

A. Not if I can help it.

Q. What do you mean by that?

A. Well, I have asked the company to keep me on, and failing that, I shall look for work elsewhere.

Q. You are not ready to quit, is that it?

A. No, I can't.

Q. Let me put to you a hypothetical situation. Assume [fol. 1527] that the Court would order the du Pont Company to distribute to its shareholders all of the General Motors shares owned by du Pont over a ten-year period in equal annual installments.

Assume further that that distribution of General Motors share would be regarded as ordinary income taxable to individual stockholders.

Have you considered, Mr. Payte, what course of action you would follow in the event that this Court were to enter such an order?

A. Yes, I have.

Q. Would you tell us what you have in mind doing?

A. Well, out of 40 shares, I would have to sell 30 to avoid receiving my investment back as income, taxable income.

Q. Let me see if I understand that. You are talking about du Pont shares now?

A. Du Pont shares, yes.

Q. You own 40 shares, and you say you would have to sell 30 of your du Pont shares?

A. Yes.

Q. Will you explain that a little more fully, please?

A. Yes. I sold some other stock in 1956 and bought du Pont, ten shares which cost me $218 a share.

If they distributed that stock, I would simply be getting my cost price back as a taxable dividend.

Then I acquired 20 shares in June of 1957, on the day the Supreme Court decision was handed down. That was a switch from General Motors to du Pont.

Q. Why did you make that switch, do you recall?

A. My broker advised me that it would be advisable because he believed that it would hurt du Pont stock less than General Motors.

Q. I see. So you switched from General Motors to du Pont?

A. Yes, sir.

[fol. 1528] Q. All right. Now, you were telling us what course of action you would follow with those 10 shares of du Pont that you acquired.

A. Those 10 shares of du Pont—do you mean the other ten? I am not quite sure I understood.

Q. Don't let me confuse you. You spoke of 20 shares——

A. I had 20 shares and 10 shares, which I would sell. That would leave about 30 shares—to avoid the receipt of a dividend.

Q. You would sell 30 of your du Pont shares——

A. Yes.

Q. (Continuing)—in order to avoid getting this General Motors dividend?

A. Yes, sir.

Q. Then you would retain 10 of your du Pont shares?

A. I would retain ten, yes.

Q. And would be prepared to accept the dividend on those 10 shares?

A. No, I do not think I would. I would expect the General Motors shares to go down. If this continued over a period of ten years, I would expect the stock to be continuously depressed.

So I rather think I would have to dispose of the General Motors shares as I received them to avoid receiving—or to avoid holding a stock that was going down in price.

Q. Well, let us see if we can recapitulate that. Of the 40 shares of du Pont that you own, as I understand it, you would sell 30 shares as soon as this Government plan went into effect, is that correct?

A. Yes, that is correct.

Q. And on the remaining 10 shares of du Pont that you would hold, you would sell off all the General Motors stock you received as a dividend there?

A. Yes.

Q. You referred to a holding of 341 shares of General Motors that you now have.

A. Yes.

Q. Have you considered what, if any, course of action you would take with respect to those shares in the event [fol. 1529] that a situation such as that described in my hypothetical question were to come about?

A. Yes, I have considered it, but it is difficult to make a decision at this time. That stock would undoubtedly go down in price. I have considered the way to protect myself against that.

Q. Have you come up with some solution?

A. I have several possible solutions. One was—I discussed it with my broker and he felt that one way of doing it would be to sell General Motors short, what they call selling against the box.

Q. Have you ever sold against the box?

A. No, I never have. I understand that it is a bit of a tricky business that might involve an amateur like myself in a loss. It seems to me it—he mentioned the possibility, if this stock started a gradual decline, that the payment of interest and the payment of dividends on the stock I had sold short would finally be expensive, and for anyone except a professional trader that might be a difficult thing to do successfully.

Q. Have you come to any conclusion as to whether you want to embark on a program of selling against the box?

A. My inclination is not to do it.

Q. Did the broker come up with any other suggestions to protect yourself?

A. No. We did consider selling. That was another possibility, selling the 341 shares, but that would involve a considerable income tax.

Q. Income tax?

A. Yes.

Q. If you were to sell your 341 shares of General Motors?

A. Yes. I have a rather low base. It runs from 5 to about 10 dollars a share for most of it. That would cost me around $2,000 of tax.

[fol. 1530] Q. That would be in a capital gains tax?

A. That would be a capital gains tax, yes.

Q. So the prospect of selling the General Motors shares isn't very attractive, is that right?

A. No, not at all. I am rather squeezed.

Q. What do you mean you are squeezed?

A. Well, I find it difficult to sell against the box; I find it difficult to sell the stock outright, or if I keep the stock and go into retirement, and the price is depressed for a period of ten years, if I had to sell it at that I might have to sell it at a sacrifice. So that would not be very attractive.

As a matter of fact, no alternative is attractive. I suppose I would have to wait until the time came and see what the prospects were at that particular time.

Q. In other words, resign yourself to a loss in some way or another, is that it?

A. Yes. It is inevitable.

Q. Have you communicated with the du Pont Company regarding this litigation and the Government proposal?

A. Yes, I did.

Q. Have you communicated with the Department of Justice?

A. Yes.

Q. Have you had any written communications with the Department of Justice?

A. Yes. I wrote the Attorney General in September of 1957.

Q. You wrote to him?

A. Yes.

Q. Do you have a copy of that letter?

A. Yes, I have.

Q. Was that letter written in connection with this litigation?

A. Yes.

Q. Did it express your concern about this litigation?

A. Yes. I was alarmed by an interview some anonymous spokesman for the Department of Justice had granted to the Wall Street Journal.

Q. And you took the occasion to write to the Attorney General?

A. Yes.

[fol. 1531] Q. You say you do have a copy of that letter?

A. Yes.

Q. I wonder if you, rather than attempting to recollect

the position you put forth, if you would read that letter you sent to the Attorney General at that time?

A. Yes.

Q. You had better raise your voice a little. It is somewhat difficult to hear you, Mr. Payte.

A. All right.

Q. What was the date of the letter?

A. This letter was dated September 15th, 1957. It was addressed to the Honorable Herbert Brownell, Jr., Attorney General.

Q. Would you read it, please?

A. Can you hear me now?

Q. Just a little louder.

A. (Reading)

"I am disturbed by the aims of an anonymous spokesman for the Department of Justice quoted by the Wall Street Journal of September 11th as boasting 'we have won the lawsuit and we are not going to lose the relief.'

"His idea of not losing the relief is to force du Pont to sell 63 million shares of General Motors Corporation. As a small stockholder in both du Pont and General Motors, I am one of the criminal conspirators the Department aims to get.

"Sales of General Motors stock could not seriously damage du Pont's chemical business, but more than half a million small stockholders whose life savings are invested in the stock of these companies could be crucified. Here is how it would work.

"For each one hundred dollars of proceeds from the sale of General Motors stock, $96 would be profit taxable at the rate of 25 per cent; but since du Pont cannot be expected to find profitable employment for two billion dollars, the remaining $72 of the profit [fol. 1532] would necessarily be passed on to stockholders where it would again be taxed at not less than twenty per cent, leaving the stockholders with no more than $57.60 of each $100 of du Pont received from the sale.

"But depressing as it is, this is the bright side of the picture. Actually, the sale of such a large block of stock would drive down the price of General Motors

stock probably as much as 75 per cent. The price of du Pont stock would be marked down at least $60.

"Even if General Motors stock were marketed gradually, such a large block of stock hanging over the market would depress its price for years. Banks would be unlikely to accept it as collateral.

"No doubt this would be emotionally satisfying to the anonymous sadist in the Department of Justice. At worst, the effect on the du Pont family would be no more than a reduction of death taxes, but to thousands of small stockholders like me, who have retired or who are virtually in retirement, the prospect of loss of 40 per cent to 75 per cent of their small wealth is frightening.

"What can small stockholders do to protect themselves?

"Sincerely yours."

Q. I take it, Mr. Payte, from the date and the tenor of your letter that that was written before the Government filed its proposal for so-called relief in this case?

A. Yes, that is correct.

Q. Did you hear anything from the Department of Justice with respect to your communication?

A. Yes. I received a letter from Victor R. Hansen, Assistant Attorney General.

[fol. 1533] Q. Do you have a copy of that letter there?

A. I have.

Q. Would you read it to us, please?

A. This letter is dated September 20, 1957. (Reading):

"Mr. Henry L. Payte,
21 Gifford Avenue,
Jersey City 4, New Jersey.

Dear Mr. Payte:

"I have your letter of September 15, 1957, concerning United States v. E. I. du Pont de Nemours & Company, et al. In your letter you state that as a small stockholder in both du Pont and General Motors, you are seriously concerned about the effect of any final judgment which may be entered in this suit.

"The Antitrust Division is giving very careful study to the effect which any judgment to be entered by the

Court in this case will have on stockholders of General Motors and du Pont, as well as the public generally, including the tax effect——"

Q. What was that last part?

A. "Including the tax effect." (Continuing)

"You may be assured that the Antitrust Division is very much aware of its responsibilities in this matter and that any action which is to be taken will be carefully reviewed by me personally.

"Sincerely yours,

"Sincerely yours, Victor R. Hansen, Assistant Attorney General, Antitrust Division."

Q. What was the date of that letter you received from Mr. Hansen?

A. September 20, 1957.

[fol. 1534] Q. 1957. Did you have any communications with the Department or Mr. Hansen personally thereafter?

A. Only to obtain a copy of the memorandum filed by the Department of Justice last summer or fall, I have forgotten which.

Q. Did Mr. Hansen send you a copy of that?

A. Yes, he did.

Q. At your request, or voluntarily?

A. Well, he did it voluntarily.

Q. He did it voluntarily?

A. He did it voluntarily. I was a little slow in getting it. I wrote and asked him for it, but I would not have to have done that. I received two copies.

Mr. Gribbon: I believe that is all the questions I have, your Honor.

The Court: Very well.

Mr. Reycraft: No cross-examination.

The Court: You are excused.

(Witness excused.)

Mr. Gribbon: I call Mr. Richard C. Peter.

RICHARD C. PETER, called as a witness on behalf of defendant E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, please?
A. Richard C. Peter, P-e-t-e-r.
Q. Where is your home?
A. 549 Barberry Lane, Louisville 6, Kentucky.
Q. And what is your occupation, Mr. Peter?
A. I am a manufacturer's agent.
Q. Are you employed by the du Pont Company?
A. Not now.
[fol. 1535] Q. Were you employed by the du Pont Company?
A. I was.
Q. For what period of time?
A. Approximately twenty-two years.
Q. And when did your employment with the du Pont Company cease?
A. About ten or eleven years ago.
Q. Are you on any pension from the du Pont Company?
A. I am sorry, no.
Q. What are some of the companies for whom you act as manufacturers' agent?
A. I represent the Peerless Roll Leaf Company, whose factory is in Union City, New Jersey; the Connersville Paint & Supply Company, of Connersville, Indiana; and the Continental Can Company.
I sell their plastic film for agricultural end uses.
Q. Do any of the products that you handle for these companies compete with du Pont products?
A. Yes, the paint and the plastic film both compete with du Pont.
Q. Are you an owner of du Pont common stock?
A. Yes, I am.
Q. How many shares do you own?
A. I own 392 shares, and my wife owns 300 shares.
Q. 300 shares? So your total holdings are 692 shares?
A. Correct.

Q. For how long have you and Mrs. Peter been owners of du Pont common stock?

A. Why, I first began to acquire du Pont stock when I worked for the company around 1930, or perhaps a little prior to that.

Q. And Mrs. Peter?

A. Well, Mrs. Peter, she has had it for quite a while.

Q. Approximately that date, do you recall?

A. No, I think her stock came a little later than that.

[fol. 1536] Q. All right.

A. '35, maybe. I do not recall. I can look it up if you want.

Q. That is all right. She has been a stockholder for a long time?

A. For a long time.

Q. Do you own any General Motors stock?

A. Yes, I own 412 shares of General Motors.

Q. Do you and Mrs. Peter file a joint Federal income tax return?

A. We do.

Q. In what tax bracket did your highest income fall last year?

A. 38 per cent.

Q. In addition are you required to pay a State income tax in Kentucky?

A. Yes. The top bracket in my State income tax is 8 per cent on what I have left after I pay my Federal tax.

Q. Pardon me?

A. My top bracket in the Kentucky State tax is 8 per cent, but I can deduct from that—or rather before I calculate my income, I take off the Federal tax.

Q. But do you have to pay a State income tax upon the credit income?

A. Yes. In other words, if I have a hundred dollars taxable income, I pay $38 to the Federal Government, and that leaves $62 on which I pay eight per cent to the State of Kentucky.

Q. I understand.

Do you anticipate any change in your situation that would move your tax bracket up or down?

A. I am always optimistic, but I don't know of any reason it should go down. I hope it will go down.

Q. What proportion of your income has been represented in recent years by dividends from du Pont?

A. 15 per cent of Mrs. Peter's and my joint income; approximately 15 per cent.

[fol. 1537] Q. Let me ask you to consider a situation that you would be in in the event that the Court would order the du Pont Company to distribute its holdings of General Motors shares to the du Pont shareholders over a 10-year period in equal annual installments, assuming that the Internal Revenue authorities would rule that such distribution would be taxed to individual du Pont stockholders at ordinary tax rates.

Have you considered what your course of action might be in the event of such an order?

A. I certainly have.

Q. I believe you have computed with me the number of shares of General Motors stock to which you and Mrs. Peter would become entitled under such a distribution plan, have you not?

A. That is correct.

Q. And I think that it works out that you would receive 954 shares.

A. Point nine six.

Q. Point nine six—and your additional income per year, assuming General Motors had a value of $40 a share, would be about $3820, would it not?

A. That is correct.

Q. And I think you calculated that the Federal income tax, after the dividends received credit, would be in the neighborhood of $1,298?

A. Approximately 37 per cent, 37 or—I mean, 38 per cent.

Q. So on a distribution of $3820, you would have to pay a Federal tax at the 38 per cent bracket of $1,298?

A. That sounds right.

Q. On top of that would be the Kentucky State income tax?

A. Yes, sir.

Q. Have you also considered whether this might affect a change in your income tax bracket?

A. I hope so. I hope that—well yes, I think it might. I don't know, of course, but I might get into a higher bracket.

[fol. 1538] Q. The figures indicate that this might bring you into the next highest bracket, the 43 per cent bracket.

A. I would think so, My experience has been that this constant inflation brings me more dollars and higher tax brackets, but no better standard of living.

Q. Have you considered what you might do with the General Motors shares you would receive each year in a distribution from du Pont?

A. I would have to sell such General Motors stock to pay my increased taxes.

Q. You would have no other cash resources from which to pay the taxes?

A. There is nothing else I could do except to lower my standard of living, and at this age I don't want to do that.

Q. So your thought is that you would be required to sell as many General Motors shares each year as it would be necessary to raise cash for taxes?

A. That is correct.

Mr. Gribbon: That is all the questions I have, your Honor.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

(Whereupon the trial in the above-entitled cause was recessed until 2:00 o'clock p.m. of the same day, Tuesday, March 17, 1959.)

[fol. 1539] Before Hon. Walter J. LaBuy, Tuesday, March 17, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to recess.

Present: Same as before.

The Court: Proceed, please.

Mr. Gribbon: I will call Mr. Maxwell Turner.

Maxwell Turner, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, Mr. Turner?

A. Maxwell Turner.

Q. Where do you live, Mr. Turner?

A. 511 Rock Street, Fall River, Massachusetts.

Q. What is your occupation?

A. I am a professional appraiser and auctioneer, antiquarian.

Q. Have you ever been employed by the du Pont Company?

A. No, sir.

Q. Or by General Motors?

A. No, sir.

Q. Are you a stockholder of the du Pont Company?

A. I am not personally a stockholder.

Q. Are you married, Mr. Turner?

A. Yes, sir.

Q. Is Mrs. Turner a stockholder of the du Pont Company?

[fol. 1540] A. She is.

Q. How many shares of du Pont common stock does she own?

A. She now has 60 shares.

Q. Do you know how long she has been a stockholder of du Pont?

A. I do, sir, because I bought the shares for her with money given to her by her uncle, who is now deceased.

In December 1936, we were given some money to invest, to keep forever, and we selected stock of a company that we admired very much, du Pont, and we bought it.

I can tell you what I paid for it.

Q. What did you pay?

A. Roughly $1800 for 15 shares.

Q. In 1936?

A. In 1936, and we have never sold any of it or bought any more, and we have been very satisfied with the investment.

Q. That now represents the 60 shares which Mrs. Turner holds?

A. That is correct.

Q. Do you manage Mrs. Turner's investments?

A. I do.

Q. Under her supervision?

A. She and I have a mutual arrangement. She feels that

I had good education in economics at college, and that I know perhaps a little bit more about it than she does, but we consult with each other. Usually the decision is mine.

Q. And you are in charge of taking care of the family finances and filling out tax returns and matters of that kind?

A. That is right.

Q. Does Mrs. Turner own any General Motors common stock?

A. Yes, sir, she does.

Q. How many shares?

A. She now has 210 shares of General Motors stock.

[fol. 1541] Q. Do you and Mrs. Turner file a joint federal income tax return?

A. We do.

Q. What is the highest income tax bracket in which you have reported in recent years?

A. About 22 per cent.

Q. Is there anything in your personal situation that would indicate a change in your tax bracket?

A. I believe so.

Q. In which direction?

A. Upward. I have had very heavy medical expenses for three or four years running. One son was in a very bad automobile accident. Another son has had three skull concussions in athletic events. My mother is quite aged and is in a private nursing home. I have just appraised one of the largest estates in the United States and the fees from that will be considerably more than I have ever earned before.

Q. And you would anticipate a reduction in your deductions and an increase in your income which will put you in a higher tax bracket?

A. That is a virtual certainty.

Q. Let me ask you to assume that this Court should enter an order directing the du Pont Company to distribute to its shareholders all of its stock in General Motors over a 10-year period in equal annual installments, and that such a distribution of General Motors stock held by du Pont would be regarded and taxed as ordinary income by the United States tax authorities.

Have you considered what course of action you would follow with respect to your holdings of du Pont stock or

the holdings of the General Motors stock, rather the shares of General Motors which you would receive in such a distribution?

A. We have already considered and concluded what we [fol. 1542] would do about that situation, if and when it arises.

Q. What are your conclusions?

A. We will immediately sell the General Motors stock which comes to us against our will in this matter, and turn it into cash, because it is actually treated as a dividend, as unearned income. I would also sell the du Pont stock because I feel that it would decline, and certainly suffer seriously in the stock market.

Q. Would you consider selling the du Pont stock before the General Motors distribution commences? Is that your testimony?

A. No, because we admire it so much, its management, its long history, and its reputation. I think anyone would be a fool to sell du Pont stock if he didn't have to, or didn't feel it was going to suffer pricewise.

Q. But in the event the Court should enter such an order as I indicated——

A. If we know that is going to happen, we feel then the roof would be caving in a little bit on it.

Q. And your present conclusion is that you would sell your du Pont stock?

A. Yes.

Q. Is du Pont the sole investment that Mrs. Turner has?

A. By no means, no. It is not the sole investment.

Q. Does it represent a large or small part of her portfolio?

A. The income from it or the principal?

Q. The principal.

A. The principal?

Q. Yes.

A. Oh, it is about five per cent.

Q. And in terms of income?

A. Two and a half percent, roughly.

Q. Do you believe, Mr. Turner, that in the event the Court should enter such an order as I have described, you would be able to sell your du Pont stock for anything like its true value or the market price at that time?

A. I am convinced that we wouldn't get all that the com-[fol. 1543] pany deserves to have the market place value it at, dollarwise.

Q. You mean you would have to sell it at somewhat of a sacrifice?

A. That is correct.

Q. But you feel you would prefer to make that sacrifice instead of waiting to pay income tax on General Motors dividends?

A. Yes. We have already got General Motors stock, and we feel that we will sell that also. There is no certainty over a period of ten years what the value of that so-called dividend and stock is going to be when we receive it, if it should be sent out over a 10-year period.

Q. You mean you would also sell your 210 shares of General Motors stock if the Court should enter such a plan?

A. I believe so. Thousands of stockholders will be selling that stock in order to get what otherwise would be coming to them in the form of a dividend.

Q. And you would be among those thousands?

A. I would.

Mr. Gribbon: That is all the questions I have, your Honor.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Gribbon: I will call Miss Elisabeth Babbitt.

ELISABETH BABBITT, called as a witness on behalf of defendant E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

[fol. 1544] Direct examination.

By Mr. Gribbon:

Q. Miss Babbitt, will you give your name to the Reporter, please?

A. Elisabeth Babbitt.

Q. Are you employed by the du Pont Company?
A. No, I am not.
Q. Are you employed by General Motors?
A. No.
Q. Where do you live, Miss Babbitt?
A. 1028 North Dearborn Street, Chicago.
Q. In what kind of work are you engaged?
A. I was an advertising copywriter. I gave up my job last year to write fiction.
Q. Were you employed in Chicago as an advertising copywriter?
A. Yes.
Q. For one of the advertising firms in Chicago?
A. Yes, an agency here.
Q. When did you give up your job?
A. December.
Q. Of 1958?
A. Yes.
Q. And what are you doing now?
A. Now I am doing some free-lance copy and trying to write stories.
Q. But you are self-employed, is that correct?
A. Yes.
Q. Are you an owner of du Pont common stock?
A. Yes.
Q. How many shares do you own, Miss Babbitt?
A. 630.
Q. Could you tell us the manner in which you acquired those shares?
A. I bought 65, and my parents gave me the rest.
Q. When did you buy the 65 shares, do you recall?
A. Starting in 1949, and the gifts went up through 1955, at various times.
Q. You acquired your holdings, then, either by purchase or gift?
A. That is right.
[fol. 1545] Q. Between 1949 and 1955?
A. Yes.
Q. How much of your total income is represented by dividends from the du Pont stock which you hold?
A. Of my present income, it is almost two-thirds.
Q. Almost two-thirds?

A. Represented by du Pont dividends, yes.

Q. Two-thirds of your current income is represented by the du Pont dividends?

A. Yes.

Q. What is the minimum tax bracket you would expect to be in, say, this current year, Miss Babbitt?

A. I think probably 30 per cent.

Q. 30 per cent?

A. I believe so.

Q. I gather if your efforts as a writer meet with success, you will be in a higher tax bracket?

A. I would like to be.

Q. If this Court, Miss Babbitt, should enter an order which would require the du Pont Company to distribute to its shareholders the 63 million shares of du Pont which it owns over a period of ten years in equal annual payments, and if that distribution to shareholders should be taxed as ordinary income, you have given consideration to the course of action you might follow with respect to your du Pont holdings?

A. Yes, I have.

Q. And to the course of action you might follow with respect to any General Motors that you might receive on such a distribution?

A. Yes.

Q. Would you sell your du Pont stock?

A. I don't believe so. I haven't considered that too thoroughly, but I would probably have to sell some of the G.M. I received, at least. I might sell more.

Q. Now, you own 630 shares of the du Pont stock?

A. Yes.

[fol. 1546] Q. I believe we calculated that you would receive, under the Government Plan, 869 shares of General Motors over a ten-year period.

A. Yes.

Q. And if we were to assume General Motors at a value of $40 a share, you would be receiving each year in a dividend from du Pont General Motors stock valued at approximately $3,470?

A. Yes, that is right.

Q. And at your minimum tax bracket of 30 per cent the tax on that amount, I believe you computed to be about $896, is that correct?

A. That is right.

Q. Now, would you find it necessary to sell the General Motors stock you received in order to pay that tax?

A. Probably I would have to sell at least part of it.

Q. Do you think you would sell as much as would be necessary——

A. To pay the tax.

Q. Now, supposing that du Pont were to distribute shares of General Motors, in lieu of a regular cash dividend, have you considered what you would have to do in those circumstances?

A. Well, that would completely change my way of life. I would have to either sell a great deal more of something or stop my free lancing and go back to a regular job, if I could get one.

Q. That is because the du Pont dividends form such a substantial part of your current income?

A. That is right.

Mr. Gribbon: I have no further questions.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Gribbon: We call Walter Pond.

[fol. 1547] WALTER F. POND, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, please?

A. Walter F. Pond, P-o-n-d. Residence, Greybull, Wyoming, G-r-e-y-b-u-l-l.

Q. What is your occupation?

A. I am a consulting geologist. My duties take me all over the western United States and somewhat into the southeastern and occasionally into foreign countries.

Q. Have you ever been employed by the du Pont Company or by General Motors?

A. Never, sir.

Q. How old a man are you, Mr. Pond?

A. I am 74 come June.

Q. Are you self-employed?

A. Yes, sir.

Q. Are you an owner of du Pont common stock?

A. I have 60 shares held by a broker.

Q. Held in the name of a broker?

A. Yes, sir.

Q. You are the beneficial owner of those shares?

A. Yes, sir.

Q. For how long have you held those shares?

A. Since 1941. In December, 1941, I bought 15 shares, which have since been split, and I now have 60 shares.

Q. Does your wife own some shares of du Pont common stock?

A. She also has 25 shares and my son has also 25 shares.

Q. Do you own any shares of General Motors Corporation?

A. Yes, I have 300 shares of General Motors and [fol. 1548] my wife and son also have fairly large holdings comparable.

Q. Do you and Mrs. Pond file a joint return?

A. No, we file separate returns.

Q. You file separate returns? What was the highest income tax bracket shown on your last return?

A. 34 per cent.

Q. Do you anticipate any changes in your financial situation?

A. If any change, it will go up.

Q. Supposing the Court were to enter an order directing the du Pont Company to distribute its shares of General Motors as a dividend to du Pont shareholders, taxable as a dividend over a period of ten years, in ten equal installments, have you considered, Mr. Pond, what course of action you might follow in those circumstances?

A. I have given it a great deal of thought and I must confess that I have not come to a clear decision on it, because there are so many uncertainties in the situation. I have even considered selling my present du Pont holdings in order to get out of the whole problem, but since I acquire[d]

the shares in 1941 the capital gains tax would take such a bite that I have had to discard that possibility.

In the future, based on present conditions, present commercial conditions, present market conditions, I would receive—I think it is 8.28 shares per year for ten years. The 34 per cent or, rather, a net 30 per cent minus the four per cent allowance would be roughly 13 to 14 dollars per share.

If, as you have stated, with previous witnesses, we are to consider a market value of $40 at that time, that tax of, we will say, $13, would reduce my value mentally, we will say, not a tax cost basis but in effect I would be in a position of holding that share at $27 and I could not turn down [fol. 1549] an opportunity of taking on a share of General Motors, the market for which was $40 at $27.

So I would make every effort to keep those shares; but, just as at the present, I have to from time to time borrow to make my quarterly payments on income tax. I would have to borrow extra to make up for that approximately $100 per year tax in order to be able to hold those shares and not sell them at a sacrifice.

There is, of course, also the question as to whether, with all of these shares, or at least a large part of them thrown on the market, as to whether the market price will not be depressed. Just as recently we have had the Ford Foundation proposing to sell an additional number of their shares and the Ford stock immediately dropped on the market. So that all in all it is still a very puzzling question to me, but I am of the opinion that I would make every effort to keep those shares at whatever cost it might be to me.

Q. If you determined to sell those shares, do you think you would be able to sell them for anything like their true value, the shares of General Motors you might receive?

A. That, of course, is far in the future, but my general impression is that so many of the shares will be sold that the price will be depressed, and I would not be able to get a fair value, that is, the market value would be much less than the fair value of the shares.

Mr. Gribbon: I have no further questions, your Honor.

Mr. Reycraft: No questions.

The Court: You are excused.

Mr. Gribbon: Thank you, Mr. Pond.

(Witness excused.)

[fol. 1550] LEON A. MILLER, called as a witness on behalf of the defendant E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Would you state your name for the Reporter, please?
A. Leon A. Miller.
Q. Where do you live, Mr. Miller?
A. 4821 Fourth Avenue North, St. Petersburg, Florida.
Q. What is your occupation?
A. Retired structural engineer.
Q. Where were you employed, Mr. Miller, before your retirement?
A. Smith-Hinshman Grills, Detroit, Michigan.
Q. For how long have you been retired?
A. Since May, 1954.
Q. Are you living on a pension now, Mr. Miller?
A. No, I have no pension; I have a trust fund from the company, the Smith-Hinshman Grills, for five years, but it runs out this year. That is the last I will get from it. It was a small amount, $232.00 a year. After that, I will have nothing but my own—what I have saved out of my salary and invested, and the Social Security.
Q. You will be living on your savings completely, plus Social Security?
A. Income from the savings, that is correct.
Q. Have you ever been employed by the du Pont Company?
A. No, sir.
Q. Are you the owner of du Pont common stock?
A. I own 60 shares, myself.
[fol. 1551] Q. When did you acquire those shares?
A. Well, I can't tell you when I acquired the 60 shares, because my wife also has 100 shares, and they have been transferred, but I bought 10 shares in 1929 at $104¼, ten shares in 1944 at $140, ten shares in 1946 at $185⅝, ten shares in 1948 at $181⅝. That averages $38.00 per share for the present shares, at cost.
Q. So that you have been a stockholder since 1929?
A. Yes, sir.

Q. And you say Mrs. Miller owns 100 shares?

A. Yes, sir.

Q. And together your holdings of du Pont common are 160 shares?

A. That is right.

Q. Do you also own any General Motors stock?

A. I own 126 shares of General Motors.

Q. Do you and Mrs. Miller file a joint Federal income tax return?

A. We do.

Q. And what is the highest tax bracket in which you find yourself?

A. 22 per cent.

Q. And I take it that no increase would be expected in that bracket?

A. Not unless dividends are increased, which I expect they will be, since I have such a small return on my capital.

Q. Now if the court here should direct the du Pont company to distribute to its shareholders as a dividend the General Motors shares which du Pont owns, over a ten-year period, in equal annual installments, I would like to ask you to consider what course of action you might follow in that event.

Before that, perhaps we might compute the number of shares of General Motors to which you would become entitled on such a distribution. I think you have computed [fol. 1552] that you would be entitled to a total of 220.8 shares of General Motors over the ten-year period?

A. Yes, that is right, sir.

Q. And that would bring you each year, if we assume a value on General Motors of $40, about $883.

A. Yes, sir.

Q. And of that amount in your tax bracket you would have to pay approximately $158 in federal income tax?

A. Yes, sir.

Q. Have you considered whether you would sell such General Motors shares as were received in the distribution?

A. I have considered it, but I have not decided upon anything yet, since it depends on so many other things.

Q. What factors have you taken into account in considering this problem, Mr. Miller?

A. Well, the fact that it is taxed would have no effect on my decision, because I have enough put aside for any unexpected occurrences; but of course, this wasn't one of them.

Q. This wasn't one of the occurrences that you provided any reserve for, was it?

A. That is right; and it depends on how General Motors cars are accepted and how they survive the attacks of the Justice Department and the politicians, the labor unions, and how the price is depressed if the stock has to be sold by the public on distribution; so I can't make any determination now as to what I would do.

Q. If you were to receive some shares of General Motors from du Pont as a dividend in lieu of a cash dividend, have you considered what you might have to do with respect to those General Motors shares?

A. Well, I would answer the question in the same way, as my original holdings of General Motors.

[fol. 1553] Q. You still would have to consider all of these factors which you have enumerated?

A. That is right.

Mr. Gribbon: I have no further questions.

Thank you very much, Mr. Miller.

The Court: You are excused.

(Witness excused.)

Mr. Gribbon: I will call Mr. Archie Marschak at this time.

ARCHIE J. MARSCHAK, called as a witness by the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you state your name for the reporter, sir?

A. Archie J. Marschak.

Q. Where do you live, Mr. Marschak?

A. 3270 North Lake Shore Drive, Chicago.

Q. Where are you employed?

A. At the National Bank of Commerce.

Q. In Chicago?

A. In Chicago.

Q. What position do you hold with the National Bank of Commerce?

A. Assistant Vice President.

Q. For how long have you been employed at the National Bank of Commerce?

A. A little over 23 years.

Q. Have you ever been employed by the du Pont Company?

A. No, sir.

Q. Are you an owner of the common stock of du Pont?

A. Yes, sir.

Q. How many shares do you own?

A. 66.

[fol. 1554] Q. Are you married?

A. Yes, sir.

Q. Do you file a joint return?

A. Yes, sir.

Q. What is your highest income tax bracket?

A. Approximately 34 per cent.

Q. Are you anticipating any changes with respect to your tax bracket?

A. Yes, I am. I am anticipating retiring in the next few years.

Q. And what change do you anticipate that will have?

A. Well, one thing, I wouldn't want to acquire any additional—I built up an estate that I don't want to add to, and my original purpose in buying du Pont stock in 1940, and some more a little later, was because of their holdings in General Motors; and since other companies have been declaring stock dividends, always when there was a capital gain, I was always of the opinion I would never be called upon to pay a tax on this in the event there was a stock dividend of General Motors by du Pont.

Q. And have you been advised that you may be called upon to pay a tax in the event of the distribution of General Motors shares by du Pont?

A. Yes, sir, from what I read in the paper. I was very much surprised that the Government would take the action that this would be income instead of capital gain; and, because of that, I wrote to my senator, asking him to take

some action on this, because I didn't think it was fair to the stockholders to be called upon to be put to this unnecessary expense.

Q. Have you considered what you would do with any General Motors shares that might be distributed to you if du Pont were ordered to make a distribution of those shares?

A. Yes, I have. According to present plans that I have, I would have to sell, if I was called upon to pay tax—I would have to sell the General Motors stock, providing that the market was not depressed too much.

[fol. 1555] Q. Would you expect to be able to sell the General Motors stock in the event of such a distribution at anything like its fair value?

A. I don't think so.

Q. Why not?

A. I think that a great many people would be in a comparable position to myself and would also have to sell their stock, and that I am sure would depress the market considerably.

Q. As you view the situation, you would have to sell your General Motors shares?

A. Yes, I would.

Mr. Gribbon: I have no further questions.
Thank you, sir.
The Court: You are excused.

(Witness excused.)

Mr. Gribbon: I will call Mr. Harvey H. Orndorff at this time.

Harvey H. Orndorff, called as a witness on behalf of defendant E. I. du Pont de Nemours and Company, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gribbon:

Q. Will you state your name for the Reporter, please?
A. My name is Harvey H. Orndorff.

Q. Where do you live, Mr. Orndorff?

A. I live in Chicago.

Q. You had better give the Reporter your address.

A. 160 Bradwell Road, in Barrington, is my home; and my office address is 208 South LaSalle, in Chicago.

Q. What is your occupation, Mr. Orndorff?

A. I am a partner in the investment banking firm of Blunt, Ellis & Simmons.

[fol. 1556] Q. Have you ever been employed by the du Pont Company or by General Motors?

A. No, I have not.

Q. Are you a beneficial owner of du Pont common stock?

A. Yes, I am.

Q. A beneficial owner?

A. Pardon me.

Q. Do you personally own any du Pont common stock?

A. I own du Pont stock as a nominee for others, as a co-trustee in a trust.

Q. How many shares do you so own?

A. We so own 1,000 shares.

Q. I understand that there are 1,000 shares of du Pont common stock registered in your name as a nominee.

A. That is right.

Q. You have no beneficial interest in those shares?

A. I have no beneficial interest.

Q. Now can you tell us how the beneficial interest in those 1,000 shares is set up?

I think you mentioned a trust.

A. There is a trust, an irrevocable trust, in which the beneficiary is an elderly woman; and, upon her death, her two children will become the current beneficiaries.

Q. Now you are one of the trustees?

A. I am one of three trustees.

Q. One of three trustees?

A. Yes, sir.

Q. Do you also act as general financial advisor and investment consultant to the life beneficiary of the trust?

A. I do.

Q. Are you familiar with her financial affairs and in particular with her income tax situation?

A. I am.

Q. Can you tell the Court at what income tax bracket she has been paying taxes in recent years?

A. She is in the 84 per cent income tax bracket.

[fol. 1557] Q. Are you aware of any factors that might make any great change, any significant change, in this bracket in the next few years?

Due to her age, it is doubtful that she could live through an extended period of distribution of General Motors stock, and the successor income beneficiaries would then virtually be in a similar income tax bracket.

Q. I see.

Let me place before you the hypothetical situation in which this Court would order the du Pont Company to distribute to its shareholders all of the du Pont Company holdings of General Motors stock in ten equal annual installments over a ten-year period.

Have you computed, first, the number of shares to which the trust, and ultimately the beneficiaries of the trust, of which you are co-trustee, would become entitled?

A. Yes, I have.

Q. Now see if you can confirm these figures. For a thousand shares of du Pont, you would be entitled to receive over the 10-year period of the Government plan 1380 shares of General Motors?

A. Right, sir.

Q. And looking at it each year, and assuming General Motors to have a value of, say, $40, I think your additional income in the form of General Motors stock would be $5,520, is that correct?

A. Per year.

Q. Per year.

A. Per year.

Q. And your income tax per year at the tax bracket in which the present beneficiary of the trust finds itself would be approximately $4,692, would it not?

A. Or $4636.80. I think that is right.

Q. $4636?

A. Yes, sir.

[fol. 1558] Q. Out of $5,520?

A. That is right.

Q. The beneficiary would have to pay back $4,636?

A. Yes, sir.

Q. Now, in the light of those figures you have mentioned, and any other considerations that you have taken into ac-

count, have you come to any conclusions as to your course of action as a co-trustee with respect to these one thousand shares of du Pont in the event the plan I have described to you goes into effect?

A. I think the first thing we would like to say is we do not want to sell du Pont stock——

Q. I take it by that—go ahead.

A. (Continuing) Because of the excellent record the company has had and the excellent management through the years, and a firm belief on my part that the future will show greater earnings for the stockholders.

Now, if the Government plan were to come into effect, I feel that I am compelled to advise the sale of du Pont stock.

Q. I wonder if you would explain your reasons for that.

A. The basic reason, as I see it, is, as a trustee, one has the job of supplying income for the income beneficiaries, and one has the job of doing their best to keep the capital for the owners of the trust.

In the present situation, our taxes are such that we would have a loss of approximately 20 per cent of our capital, taking the du Pont valuation at the present time of 225, and we would lose roughly 20 per cent of our capital due to this Government plan if it were to become effective.

Q. When you say you would lose 20 per cent of your capital, how do you arrive at that figure of 20 per cent?

A. We arrive at that—I am speaking that we are going [fol. 1559] to lose $4636.80 on the valuation that you mentioned each year in taxes. That times ten years in $46,360, roughly, and that percentage to its market price at the present time is just about 20 per cent.

Q. In other words, 20 per cent of the present market value of your investment in du Pont would be given over to the Government in taxes?

A. That is right, and this becomes fairly clear-cut to me, since the remaining income beneficiaries will be in a somewhat similar tax bracket, virtually the same tax bracket.

My feeling as a trustee is that I believe any court would seriously criticize me for doing anything else but selling the General Motors stock, and my job as a——.

Q. You said selling the General Motors stock.

A. Pardon me, selling the du Pont stock. I think that I would be criticized if we did not advise the sale of du Pont

stock due to the proposed Government plan. Therefore, my job as a trustee, in essence, gets down to the point of staying close enough to this case so that I can make, I hope, an educated guess that if the Government plan does go through, I want to sell before the Government announces that the plan goes through, and this puts me in a very difficult guessing game.

Q. Why is it that you want to sell before the Government plan goes through?

A. Well, I think being associated in the investment business as much as I can, I live a life of securities in which each day stocks are bought and sold on an auction basis, and stocks go up because more people want to buy the stock or some news becomes favorable to the company, and then there are times in which you have news on a company that is unfavorable. Especially at the present time in which our market is very thin in volume on the bid and asked side; it is very emotionally sensitive, and if the du Pont ruling [fol. 1560] came into effect, I am sure that there would be many hundreds or thousands of people or ownerships of du Pont stock who would be desirous of selling du Pont right away for tax purposes.

It is better for them, for their own pocketbook to sell the du Pont stock than it is to hold on to it.

Therefore, as I say, my job is to stay as close to this, and hope that I can make an educated guess that I sell my du Pont stock before the decree comes out. This is a very difficult thing for a trustee.

Q. Supposing you are caught short and are unable to sell your du Pont stock before the decree comes out. I take it that you anticipate the price of du Pont is going to decline sharply, is that right?

A. I do. I do. I think that the price of du Pont will decline considerably.

Q. Now, would you nonetheless advise the sale of the thousand shares of which you are trustee?

A. The figure——

Q. What is your basis for those shares? Do you have that figure in mind?

A. Yes, I do. Our cost is $76 a share, so it is a matter of arithmetic basically as to what way we are better off.

Our decision in this case has to be in light of capital, and since our beneficiary seemingly has adequate income, our

job is to preserve that capital for the owners of this trust as much as we possibly can.

I would be inclined to sell du Pont stock—I have not determined at what point it is better off for us to sell du Pont stock, but how low—if du Pont can go to $150, the income tax bracket that the current beneficiary is in for 1958, and the return has not been completed yet, would have something to do with that case.

[fol. 1561] My guess is at the present time that we still would be advised to sell du Pont stock if it went down to 180, which is——

Q. And take the capital gain?

A. Take the capital gain.

Q. And pay your taxes on that?

A. This then puts an individual in the case of forcing an individual to pay a capital gain when they don't want to. It is cheaper for the individual that owns du Pont stock to pay a 25 per cent capital gain than it is to accept income, even though they don't want to sell du Pont.

This somewhat, in my line of thinking, has made it very difficult when we have other laws in the country which say that if a man owns land and the Government decides that they want to use some of that land for public needs and they invoke eminent domain, they give that man back a fair valuation for his land, and that is a capital gain situation.

In this case the Government says that the du Pont people have to get rid of certain General Motors stock, an asset of du Pont, and yet the——

Q. You regard that as a capital distribution?

A. —Government says it is current income. It is a partial capital distribution and taxed as though it was ordinary income, and this becomes very difficult for me to understand. But, that is why I get back, my job here is to find out what we are going to do.

As of right now, I have to sell du Pont stock if the Government plan goes through.

Q. Even if du Pont goes down?

A. Even if it goes down. I can't say exactly at what point we are better off to hold it, but it can go down considerably, go down 40 points, and we are still better off, and I am sure there are going to be a lot of people that [fol. 1562] are going to have to sell du Pont stock.

Q. The fact that there will be a lot of people such as

you in the position of trustee is going to force it down more, isn't it?

A. Yes. And I think the question that everybody asks himself is that if you get a number of people selling du Pont stock, you wonder who are going to be the buyers.

Q. What do you mean by that?

A. If the Government plan goes through, you can't have people in a high income tax bracket be interested in buying du Pont at $225 a share because that places them—they are just getting some of their capital back on an income bracket, and they are losing both ways.

For certain institutions that don't pay any taxes, it will be advantageous. But the small individual, the person in a relatively small tax bracket or who has a small number of shares, there is going to be a great many of them will be sellers.

The problem that comes up in my mind is who actually are going to be the buyers. The only one you can come up with are your pension funds and those types of institutions that do not pay taxes. These people themselves are professional people that follow the market and follow pressures of buying and selling and follow news and they aren't going to rush in at $225 a share and stabilize the market when it is their opinion that if they just relax a little bit, the pressure of the sellers will force the price down.

After it has been forced down to a great extent, then I imagine you will find these people begin to buy du Pont stock. But I don't think they are going to support it, as they [fol. 1653] don't in other things, so I am sure they won't do it in du Pont.

Q. You would be surprised if they wasted their money here?

A. I don't imagine they would have their jobs for long either.

Mr. Gribbon: I have no further questions.

Mr. Reycraft: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Cox: We are calling Mr. Sumner Emerson on behalf of du Pont, if it please the Court.

Mr. Emerson, will you take the stand?

SUMNER B. EMERSON, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been previously duly sworn, examined and testified as follows:

The Court: Let the record show the witness has been previously sworn.

Direct examination.

By Mr. Cox:

Q. You are Sumner B. Emerson?

A. Yes, sir.

Q. You are the same Sumner B. Emerson who testified during the presentation of the Government's evidence, are you?

A. Yes, sir.

Q. When you were first sworn, Mr. Emerson, at transcript page 176, you testified that you were a partner in Morgan Stanley?

A. Yes.

Q. That you have been a partner in Morgan Stanley since the firm was formed in 1941?

A. Yes, sir.

Q. And that prior to that you were an officer of the predecessor corporation?

A. I was vice-president and director of Morgan Stanley and Co., Incorporated.

[fol. 1564] Q. Where were you educated, Mr. Emerson?

A. Dartmouth College.

Q. Do you hold a degree?

A. Yes, sir; Bachelor of Science.

Q. How long were you vice-president and director of Morgan Stanley & Co., Incorporated?

A. From the Fall of 1936 until the corporation was dissolved in December 1941 and the partnership formed.

Q. Beginning with the time when you left college, will you tell us briefly what your business experience was before you became affiliated with Morgan Stanley & Co., Incorporated.

A. After getting out of the Army in 1919, I was with Pierce-Arrow Motor Car Company, and an affiliated company for two years.

In 1922 I became a securities salesman for the Guaranty Company of New York. I was in their Buffalo office until 1928. I was then made manager of the Guaranty Company of New York, Limited in Montreal in 1930. I then went to Philadelphia in charge of the Philadelphia office of the Guaranty Company of New York.

I resigned from that company in 1934 to become financial vice-president of the Fire Association of Philadelphia and its affiliated companies. There were five companies in the group and it was my responsibility to handle their investments under the supervision of their finance committee.

I left them to go with Morgan Stanley and Co., Incorporated.

Q. Are you connected in any capacity with any educational institutions?

A. Yes, sir. I am an overseer of Amos Tuck School of Business and Finance, at Dartmouth College. I am a trustee of Rutgers University.

[fol. 1565] Q. Have you ever done any teaching of any kind in educational institutions, Mr. Emerson?

A. Not teaching in the ordinary sense of the word. I have given occasional lectures both before the finance classes of the Amos Tuck School, and also the graduate finance class at the University of Vermont.

Q. Are you a member of any professional associations or organizations?

A. I don't know whether you would call them professional associations or not. I have had connection with the Investment Bankers Association of America. I have been a Chairman of their New York Committee and a Governor of the National Association. I have been President of the Bond Club of New York.

Q. At the beginning of your testimony during the Government's case, Mr. Emerson, you testified or described your duties with Morgan Stanley in these words, (Transcript 176-177):

> "I have been active in syndicating, meaning the wholesaling of issues; the sale of issues to institutions; drawing of documents in connection with new issues. It has been a very varied responsibility."

Can you tell the Court, Mr. Emerson, to what degree, if at all, you have participated in the various underwritings, stock offerings, that have been managed by Morgan Stanley & Company and by the predecessor corporation while you were associated with both of those institutions?

A. Well, I have had something to do with about all of them. The importance of the function would vary with the issue. Sometimes I would be primarily responsible. More often, I would be working with other partners.

Q. Mr. Emerson, in the course of those duties, have you ever been called upon to determine yourself or to partici-
[fol. 1566] pate in determining the price at which offerings of common stock should be made at market?

A. Yes, sir, in practically all of them.

Q. Mr. Emerson, have you made a study of the proposed judgment that was filed by the Government in this Court on October 25, 1957——

A. I have.

Q. (Continuing)—for the purpose of determining what economic and financial consequences might reasonably be expected to follow if that proposed judgment should be approved by the Court and put into execution?

A. Yes, sir.

Q. Was this study made at the request of the du Pont Company?

A. It was.

Q. In connection with that, or in the course of that study, have you specifically directed your attention to the question of what effect the adoption and execution of the proposed judgment would have on the market price of the common stock of General Motors and on the market price of the common stock of the du Pont Company?

A. Yes, sir.

Q. For the purpose of this study, did the du Pont Company supply you with certain information with respect to the amount of the common stock of General Motors that was held first by the du Pont Company and second, by Christiana Securities Company and third, by Delaware Realty Company?

A. Yes, sir.

Q. What was that information? You may consult your notes if you like.

A. The du Pont Company owns—this is as of December 31, 1957; the du Pont Company owns 63 million shares of General Motors. Christiana Securities owned 535,500 [fol. 1567] shares. Delaware Realty and Investment, none.

Q. Did the du Pont Company also supply you with any information with respect to the cost basis of those stock holdings for tax purposes?

A. Yes, sir.

Q. What was that information?

A. The average tax basis of the General Motors owned by the du Pont Company was $2.09 a share. A similar figure for Christiana was $9.01.

Q. Now, were you also given by the du Pont Company any information with respect to the amount of common stock of du Pont Company owned by Christiana?

A. Yes, sir.

Q. What was that information?

A. 12,199,200 shares.

Q. Were you informed what the average per share cost of that stock was for tax purposes?

A. $5.87.

Q. Were you given any information with respect to the stock holdings of Delaware Realty Company in the common stock of the du Pont Company?

A. Yes, sir.

Q. What was that figure, Mr. Emerson?

A. 1,217,920 shares.

Q. And were you informed as to the average per share cost of that stock for tax purposes?

A. $3.07.

Q. And were you given by the du Pont Company, Mr. Emerson, any information with respect to the amount of the stock of Christiana Securities Company that was owned by Delaware Realty Company?

A. 49,000 shares.

Q. And were you informed as to the average per share cost of that stock?

A. $60.62.

Q. Now, are these figures that you have given us the figures which you used in the course of your study?

A. They are.

Q. Mr. Emerson, have you read the proposed judg-

[fol. 1568] ment that was filed by the Government in this Court on October 25, 1957?

A. Yes, sir.

Q. Have you read the text of that judgment?

A. Yes, sir.

Q. The entire judgment?

A. Yes, sir.

Q. Have you read the letters that were addressed to the Internal Revenue Service in connection with the request for a ruling that was made as to the tax consequences that might be expected to follow if that proposed judgment should be adopted?

A. Yes, sir.

Q. In that connection, I would like you to address or direct your attention specifically to a letter that was written by the Department of Justice, dated December 18, 1957, and one written by the Department of Justice that was dated March 13, 1958, both addressed to the Internal Revenue Service in connection with that request for ruling.

Can you recall having read those letters?

A. I have read them both.

Q. Now, Mr. Emerson, for the purpose of this study which you made, what assumptions did you make with respect to the salient points or aspects of the Government's proposed judgment?

A. Well, the proposed judgment in a nutshell was that the 63 million shares of General Motors owned by du Pont and the 535,500 shares of General Motors owned by Christiana would be delivered to a trustee. Over a 10-year period the trustee, acting as agent for the owning companies, would distribute that stock to du Pont stock owners on a proportionate basis, except that no stock would be distributed to Christiana or to Delaware or to the stockholders of Delaware.

[fol. 1569] Instead, that stock each year for ten years, amounting each year to a little under two million shares, would be sold. The proceeds would be paid over to those owners as their interests might appear.

Q. Do you recall any provision in the proposed judgment that has to do with an option that is to be given by the trustee?

A. Yes, sir.

Q. Do you recall what that provision was?

A. It was a 15-day option to be given to the stockholders of du Pont, other than Christiana, Delaware, and the stockholders of Delaware, whereby they might buy their proportionate interests in this stock that otherwise the trustee would sell.

The option would last 15 days. It would be at a price that would be determined by the trustee.

Q. Do you recall whether the judgment as you have considered it in relation to your study contained any provision with respect to the exercise of judgment by the trustee as to when the sale you have described should be made?

A. Well, there is a provision there that if in the judgment of the trustee reasonable market conditions do not prevail over a reasonable period of that year he may apply to the court for permission to delay that sale and the Government proposal goes on to define to some degree what reasonable market conditions are.

It says they shall not be deemed to exist if the price which can be realized at the time by the trustee is not sufficiently high to reflect the fair value and true worth of the stock.

Q. Now, Mr. Emerson, permit me to ask you what assumptions you made with respect to the number of shares [fol. 1570] that would be on the one hand distributed and on the other hand sold under the provisions of the judgment, the proposed judgment which you have just summarized for us?

A. Well, it would mean that the total amount to be distributed over the ten-year period, distributed to du Pont stockholders, other than Christiana, Delaware, and the stockholders of Delaware, would be an aggregate of 43,811,984 shares.

The total amount that would be sold would be 19,723,516.

Q. Now, you have testified a moment ago that you had —strike that. Let me ask you this question:

I asked you a moment ago whether you had read certain correspondence that was addressed to the Internal Revenue Service in connection with the request for a ruling as to the tax consequences of the proposed judgment. Have you read the ruling which was handed down by the Internal Revenue Service in response to that request?

A. Yes, sir.

Q. Now, for the purpose of your study, what assumptions did you make on the basis of that ruling as to the tax consequences of the Government proposal?

A. Well, the principal points were that the distribution to individuals would be taxed as ordinary income; the General Motors would be evaluated at the then market value, and that would have to be taken into the recipient's income tax.

In the case of tax free institutions, eleemosynary institutions, there would be no tax impact. In the case of corporations, there would be the usual inter-corporate tax, I guess it is called, where only 15 per cent of the income is taxed, and that is taxed at 52 per cent. So that the tax is 7.8 per cent.

In this case it would not be on the then market value of [fol. 1571] General Motors but would be based on the cost basis of the General Motors on the books of du Pont and Christiana. It works out to be 16.3 cents a share for corporations.

Q. As a result of your study, Mr. Emerson, have you formed an opinion as to what effect the adoption and execution of the Government-proposed judgment would have on the market for the common stock for General Motors?

A. Well, I studied it a great deal and it is a very difficult opinion to arrive at because the impacts on the market that would follow the adoption of the Government plan are entirely unprecedented in the financial history of this country. There is no exact yardstick. It would certainly be most drastic.

Q. Will you state the reasons that have led you to form the opinion that the effect on the market for common stock of General Motors would be most drastic?

A. Well, each year over four million three hundred odd thousand shares would be distributed to the 190,000 common stockholders of du Pont on which they would have to pay an income tax, and it seemed to me inevitable that a great many of them would have to sell the General Motors that they would be receiving in order to meet the tax. They might also sell it for other reasons.

Q. Now, you are speaking of the distribution that is to be made each year by the trustee to the stockholders of

du Pont Company, other than Christiana, Delaware, and the stockholders?

A. Yes, sir.

Q. Now, was there any other aspect of the Government plan which you took into account in reaching your opinion?

A. Would you state that question again?

Q. Was there any other aspect of the Government's [fol. 1572] plan, in addition to the annual distributions?

A. Well, there would be the annual sales by the trustee.

Q. Now, let me direct your attention first, Mr. Emerson, to the matter that you mentioned first in your answer, that is, the annual distributions that would be made by the trustee to the stockholders of du Pont other than Christiana, Delaware, and the stockholders of Delaware.

What are your reasons, if you can state them more fully than you have, for your opinion that those distributions would have an impact on the market price for the common stock of General Motors?

A. Well, we have studied the stockholders' lists of du Pont. Of course, any stock that was distributed to tax-free institutions would be tax free. They would not have to sell unless they wanted to. We thought that there might be some selling by such institutions simply because they did not like General Motors or maybe they had enough General Motors as it was.

The same situation substantially would prevail on the distributions to corporations where the tax rate would be very low. There would need to be no selling for tax reasons by either the tax-free institutions or by corporations, although we assumed that there would be some selling, but for these other reasons, but that it would not have a volume that would materially affect the market.

Now, when it comes to individuals and beneficiaries of trusts, the problem is utterly different. We studied the figures supplied by National Analysts. We tried to appraise the amount of stock that might be thrown on the market by the stockholders as a group, both individuals and beneficiaries of trusts.

In the case of the smaller individual stockholders the impact would be very low. The average holding of the stock- [fol. 1573] holders from one to one hundred shares is about 25 shares. The tax basis there or the tax impact would be so low, probably under $50, that I would think that

comparatively few of the smaller stockholders would sell because they had to.

When you get up among the larger stockholders, the stockholders of larger amounts, the figures become quite impressive.

Q. To what figures do you refer in the last answer?

A. May I refresh my memory?

Q. Yes, you may.

A. Well, take the extreme bracket, the bracket of 5,000 shares and over. Although we made these computations on every bracket—but with the bracket of 5,000 shares and over they would have an average holding of just under 13,000 shares of du Pont.

Q. Now, where does that figure come from, Mr. Emerson?

A. It comes from National Analysts' tabulation.

Q. Do you know which tabulation—is that one of the tabulations that has been introduced in evidence?

A. Well, it shows the number of stockholders and the total amount of shares, and we just divided one into the other.

It is our computation of their figures.

Q. Continue.

A. That would mean annual distributions of an average of 1787 shares of General Motors. We valued that at the present price of 46, and we valued it at 36. At 46, which is approximately the present price of General Motors, that would mean that on the average, stockholders in that group would get General Motors to the amount of $82,202; and if General Motors was then selling at 36, it would be $64,332.

Now the National Analyst figures show that the effective [fol. 1574] tax bracket for holders of 5000 shares and over is 80 per cent, after giving credit to the dividend credit. So taking 80 per cent of those two figures, there would be increased taxes on the average individual of $65,700, if you valuate General Motors at 46; of $51,400 if you evaluate it at 36. That means an increase in annual taxes on those people.

Then we checked up to find out what the probable income was of a man who is in the 80 per cent bracket; and, assuming he filed a joint return, his income would be in the bracket of $160,000 a year to $180,000 a year.

If you take off the normal tax on that income, he has left

to live on now, before any General Motors distribution is made, approximately $60,000.

Now these taxes in one case would be $51,400, in the other case $65,700; in other words, the increased taxes would use up either nearly every cent that he has to live on or more than what he has to live on, depending on how you evaluate General Motors at the time.

So it is perfectly obvious that people in that bracket have got to sell something to raise those taxes.

Now to be sure they could sell anything—the natural thing for them to sell is the security that caused the extra tax. We think a lot of them would therefore sell General Motors.

There is another reason for believing that a great many of them would sell General Motors, and that is that having received General Motors and paid an income tax on it at the then market, it goes on their books at that price, and if they turn around and sell it at that price there is no further capital gains; whereas if they sell almost any other security, if the market conditions then are like what they are today—almost any other stock—they would presumably [fol. 1575] have a heavy capital gains tax to pay; therefore, it seems reasonable to believe that a great many of those stockholders would sell General Motors. The higher the bracket, income tax bracket, the more apt they would be to have to sell something, and General Motors seems the most logical thing for them to sell.

Q. Mr. Emerson, in the course of this study, to the extent that it was directed to the point you have testified about, did you consider at all what the position of persons might be who were in an intermediate tax bracket or income range—say, a person who is in the 30 per cent tax bracket?

A. Yes. In the 30 per cent tax bracket—well, what we did was look at the stockholders who had 1 to 100 shares, and their average tax impact was 30 per cent; and the amount of the tax that they would have to pay would be somewhere under $50.00; and a person in that bracket would apparently have an income of $16,000.00 to $20,000.00, assuming he filed a joint return. And we just assumed that such a person could scrape together the upwards of $50.00, and there would have to be no necessitous, very little necessitous taxselling from that bracket; but there would be a lot of people who would sell for other reasons. They would

look on this as a dividend, instead of a distribution of assets, which it would really be. They wouldn't want to bother with a small amount of General Motors they were getting, so we think there would be some volume of selling from that bracket, but not sufficiently heavy to have a noticeable impact on the market.

Q. So far in your answers, have you been directing your [fol. 1576] testimony to the situations of individual holders of record of du Pont stock?

A. Yes, sir.

Q. Now, as a result of your study, have you made any estimate——

A. It is a little more than that, Mr. Cox. We were using the figures supplied by National Analysts, which include not only the stockholders of record, but those who would have an interest in stock in brokerage names.

For instance, there would be beneficial owners but not stockholders of record. They would be included in those figures.

Q. Have you in your answers up to this point been discussing at all the situation of trustees who hold for the benefit of others?

A. No, I haven't discussed that at all.

Q. Let me ask you whether, as a result of your study, you have made any estimate of the probable number of shares of General Motors that might be sold each year by individuals who are stockholders of record, or who otherwise would be covered by the answers you have just given? Have you made an estimate of that kind?

A. Yes. We figure, our best estimate, that the aggregate selling by individuals would be at least three-quarters of a million shares a year; that is, sales of General Motors.

Q. That would be 750,000 shares each year?

A. Yes, sir.

Q. Now let me direct your attention to the position of trustees who hold du Pont stock as trustees for others who have a beneficial interest in the stock. In the course of your study, did you consider whether those trustees might sell any of the General Motors stock that they receive on distribution?

A. We did.

Q. What conclusion did you reach with respect to whether there would be sales by such trustees?

A. Well, we made a study by brackets in just the same way with the trustees as we did for individuals. The [fol. 1577] amount of stock held by trustees is smaller; it is about 10,600,000 shares, whereas the stock held beneficially by individuals is about 14,600,000 shares.

However, the average tax of the beneficiaries of trust is higher. The average tax of the individuals over-all was 50 per cent; the average tax of the beneficiaries of trust over all was 67 per cent.

Q. From what source did you derive those figures?

A. National Analysts.

Q. Proceed.

A. And that is based—well, I think that would be true for almost any reasonable price, for General Motors.

The figures I took it from were a study which they made assuming a price of $36.

Q. As compared with the current market price of about $46?

A. Forty-six, that is correct.

Q. Now as a result of your study of the situation of the trustees, did you make any estimate as to total number of shares of General Motors that might be offered for sale by trustees as a result of the annual distribution of General Motors stock?

A. I thought that with the higher tax bracket, even though the number of shares involved was only about two-thirds as much, the selling ought to be approximately the same; in other words, another three-quarters of a million shares. However, there is going to be very heavy pressure on trustees to sell du Pont. Therefore, assuming that the trustees sell a substantial amount of du Pont and therefore do not get these distributions of General Motors, I scale that figure of three-quarters of a million down to a half a million, as a rough estimate. Nobody can tell, of course, what the impact figure is going to be, and it is [fol. 1578] going to vary from year to year, and it is going to vary—the impact is going to vary within years.

Q. That rough estimate that you have just given us comes to 500,000 shares of General Motors a year?

A. From trustees, yes.

Q. Combined with the 750,000 shares, which was your rough estimate for sales by individual owners of record, that produces a total of 1,250,000 shares, is that correct?

A. Yes, sir.

Q. Is that your best estimate as to the number of shares that might be sold each year as a result of the annual distributions of the trustees?

A. I wouldn't say—it is fair to call it a minimum estimate. We think there would be at least this number.

Q. Let me ask you this question, Mr. Emerson. In your study, how did you assume that this 1,250,000 shares would be offered for sale on the market?

A. Well, they would be in the hands of the individual owners of du Pont, and each one would make his own selling arrangements. It would be a rather disorganized sales effort, because there would be no offsetting or organized buying; but I just assume that they would sell it on the New York Stock Exchange.

Some of the larger stockholders might have secondary offerings, I don't know.

Q. In your opinion, in what period of time each year would these offerings or sales be likely to be made?

A. Well, there would be some of them dribbling into the market throughout the year. The time when the market would be under greatest pressure from such sales would [fol. 1579] be shortly after the time of annual distribution. It might reach another peak at the time of tax payments.

Q. In your opinion, is there any reason why sales or the offerings to sell might reach a peak at the time of the annual distribution?

A. Well, I think a person who is astute enough to own these stocks would see what his tax problem is going to be, and he has got his General Motors in hand.

If he is going to sell it, that is the best time to do it, before there is any movement up or down, before the market might be pushed down by, for instance, the sales by the trustee.

He has received his stock. It is selling at about the value it would be on his books, so if he sells it then there would be substantially no gain or loss.

I would think that would be the time when more stock would come into the market than any other one time in the year from the individual stockholders.

Q. In the event that the price of General Motors in that year should go down at the date of the annual——

A. I couldn't hear you.

Q. I say, in the event that the price of General Motors stock should go down on the market in the year of distribution, after the date of the distribution, did you consider in your study whether that decline in price would have any consequences so far as the distributee's tax situation was concerned?

A. Well, he has already had to compute his regular income tax on the basis of the market at that time, and if the General Motors went down after that, he would have a short term loss. I assume that is what your question meant. [fol. 1580] Q. You say at that time. Do you mean at the time of the distribution?

A. No, I mean at the time of distribution he puts the General Motors on his books at its then value.

Now, as I understand your question, what happens if after that, and he hasn't sold the General Motors, the market for General Motors goes down.

In that case, he can sell it later, and he would have a loss, long term or short term, depending on how long he had held it.

Q. In that event, on what basis is his income tax computed, the value of the stock on the date of the distribution or at the time of sale?

A. On the date of distribution; not the date of sale.

Q. In that situation, he might be paying tax on a higher value than he realizes when he sells?

A. That is correct.

Q. Mr. Emerson, in the course of your study, did you make any attempt to determine whether in the past 30 or 40 years there has been any comparable distribution of stock to the stockholders under an antitrust judgment?

A. We knew of only one.

Q. What distribution was that?

A. That was the taxable distribution in 1933 of the stock of Radio Corporation of America to the stockholders of General Electric Company and Westinghouse Electric.

Q. Do you recall when the distribution took place?

A. February 20, 1933.

Mr. Cox: May it please the Court, at this time I should like to have marked for identification three documents.

The first of them is a one-page table headed, "Radio Corporation of America," dated March 11, 1959, which shows certain price movements and volume figures for [fol. 1581] RCA stock. That exhibit, I believe, should be marked du Pont Exhibit 27 for identification.

(Thereupon said document was marked defendant du Pont Exhibit 28 for identification.)

Mr. Cox: The second of the documents is a chart headed, "RCA Common Prices Compared with Dow Jones Industrial Average, October 10, 1932 to May 1, 1933." This one, I think, should be marked du Pont Exhibit for identification number 28.

(Thereupon said document was marked defendant du Pont Exhibit 28 for identification.)

Mr. Cox: The third one is a chart headed, "Deflated Prices and Volume of Trading, RCA Stock, October 10, 1932 Through May 1, 1933."

This one should be marked du Pont Exhibit for identification number 29.

(Thereupon said document was marked defendant du Pont Exhibit 29 for identification.)

By Mr. Cox:

Q. Mr. Emerson, do you have before you copies of the documents that have been identified respectively as du Pont Exhibits for identification 27, 28 and 29?

A. Yes, sir.

Q. Did you, in the course of your investigation, make a study of the impact of the RCA distribution on the market price of RCA common stock?

A. Yes, sir.

Q. Were these charts prepared as a result of that study?

A. Yes, sir.

Q. Were they prepared under your supervision and direction?

A. They were.

Q. Are you satisfied that they are accurate?

A. I am.

Q. Now, with these charts before you, Mr. Emerson, [fol. 1582] will you tell the Court what your study of the effects of the RCA distribution show?

A. Well, Exhibit 27 is the basic data. The other two are graphic charts.

Exhibit No. 28 shows the Dow Jones industrial average, closing price each Monday for a period prior to the signing of the consent decree in November, 1932 through the bank holiday into the late spring of 1933. The Dow Jones industrial average was quite steady during that period, except after the bank holiday it became stronger.

The bottom part of the chart shows Monday's mean price of RCA for each week during that period, and it shows that it hit a high of around 80 just prior to the signing of the consent decree.

When the consent decree was signed on November 21, 1932, RCA common stock went off rather sharply. It went down to, oh, a little more than half of what it had been selling at the year end. It rose somewhat after that, but then proceeded to slide off very steadily and hit its actual low at the time the distribution took place. After the bank holiday, it rose rather sharply, as did other stocks.

The figures are more meaningful if you take Exhibit 29. The bottom of that shows the volume of RCA on the New York Stock Exchange expressed not in thousands of shares, but I guess you would call it the deflated volume. It is the percentage of the total volume. Whereas it had been running, say, one and a half per cent of the total volume, when the consent decree was signed the volume suddenly jumped up to four per cent of the total volume.

It then went down again to around one per cent, and stayed down there until the distribution took place on February 20. Then for a couple of weeks the volume rose [fol. 1583] materially, up to three or three and a half per cent, due to the fact that the stockholders of General Electric and of Westinghouse were selling the RCA they were receiving.

Now, the chart at the top of the page shows the deflated price of RCA during that period as compared with the Dow Jones industrial average. We took a base period of six previous Mondays prior to the consent decree. That

was one hundred per cent. The Dow Jones remains one hundred per cent throughout the life of the chart. In other words, the top of the chart is the Dow Jones.

The curve of RCA shows how that acted as compared with the Dow Jones industrial average. You will see it starting at a hundred per cent just before the consent decree is signed. The 27th of December it got down to a little over 60 per cent, rose again to 80 per cent in January, then went off rather steadily, hitting a low right after the distribution of the RCA stock, when it got down to a little under 55 per cent of its former price, both judged in comparison with the Dow Jones industrial index.

After that selling had taken place, following the bank holiday, it had a tendency to rise.

Q. What is the last point shown in this chart in relation to Dow Jones averages?

A. Just under 80 per cent.

Q. Mr. Emerson, do you know how the rates of income tax in effect in 1933 compare with the rates of income tax in effect now?

A. They varied from bracket to bracket, but in most brackets they were approximately a quarter of what they are today.

Q. How many shares of RCA, if you know, were involved in this distribution?

A. A little over 6,100,000.

Q. Do you know what the market value of those shares [fol. 1584] was on the date of the distribution?

A. Just about $25,000,000.

Q. Do you know what percentage of the outstanding common stock of RCA was involved in the distribution?

A. Yes, sir; approximately 46 per cent.

Q. Now, in your opinion, Mr. Emerson, what caused the decline in the price of RCA shown on these charts?

A. Well, I think people don't like to receive a dividend in stock of another company. This went to stockholders of the General Electric Company and of Westinghouse. They weren't apparently interested in receiving this stock. Its value was comparatively low because this is the time of the depression. The whole value was twenty-five million. I think some of them sold it because they just considered it a nuisance to hold it. Certainly the tax impact on the

individual stockholders, while it was there, it wouldn't be anywhere near comparable to what it would be today.

Q. A distribution of this kind today, the stock of another corporation, would have a very much greater tax impact, is that right?

A. Yes, sir.

Q. In your study of the possible impact upon the market for GM of the annual distribution required under the Government's proposed judgment, did you consider any of the distributions of stock that were made to stockholders as a result of orders entered by the Securities and Exchange Commission under the Public Utility Holding Company Act?

A. No, sir.

Q. Why did you not consider those distributions?

A. Because by special legislation they were made tax free, and therefore not comparable.

[fol. 1585] Q. Mr. Emerson, let me now direct your attention to a different aspect of the Government's plan which you have mentioned in your prior testimony, and that is sales by the trustee, the annual sales by the trustee of the shares allocable to Christiana, Delaware, and the shareholders of du Pont who also happen to be shareholders of Delaware.

What assumptions in your study did you make in respect to the number of these shares that would be sold each year?

A. Each year, assuming our figures are correct as to the stockholders of Delaware, it would be 1,972,351 shares.

Q. Can you make it easy for me and tell me, roughly, what the market value of each of those annual offerings would be at the present price of 46?

A. This is substantially two million shares, and two million times 46 would be 92 million a year.

Q. And considering the possible or probable impact of these trustee sales on the market price of General Motors, did you take into account the provision in the Government's plan which provides the trustee may offer an option to the other shareholders of du Pont purchasing shares, that is, the provision you referred to in describing the assumptions you made as to the Government's plan?

A. Yes, sir, we gave consideration to it.

Q. What consideration did you give to it?

A. That it was meaningless.

Q. What was your reason for saying it was meaningless?

A. Well, it is not a rights offering, though it is dressed up to look like one. It lasts 15 days. It is at a price [fol. 1586] which, I assume, would have to be the market, because I couldn't visualize the trustee setting it below the market. If he did, he would be giving away the assets of Christiana and Delaware to other stockholders of du Pont.

If it is at the market, it is meaningless. The stockholders of the du Pont Company are reciving four million shares each year of General Motors stock, much of which they will have to sell for tax reasons.

I see no reason why they would turn around and buy additional General Motors at the market. There might be a few cases where people would exercise an option, but the practical effect of them, in my opinion, would be zero.

Q. Mr. Emerson, how would each of these annual single offerings by the trustee compare with other offerings of common stock in the past twenty years with which you are familiar?

A. Well, each one would be a very substantial transaction. After all, offerings of $92 million are rare, particularly when they are in a series of one every year for ten years.

Mr. Cox: I should now like to have marked for identification a table headed "Offering of Industrial Common Stocks to Stockholders, $50 million and over, 1930 to February 6, 1959."

I think this exhibit should be marked du Pont Exhibit for identification No. 30.

(Thereupon said document was marked Defendant du Pont Exhibit No. 30, for identification.)

By Mr. Cox:

Q. Mr. Emerson, do you have before you a copy of the table that has been marked du Pont Exhibit for identification 30?

A. Yes.

[fol 1587] Q. Is this a table that you prepared in the course of your study?

A. Yes, sir.

Q. Was it prepared under your direction and supervision?

A. Yes, sir.

Q. Are you satisfied that it is accurate?

A. I am.

Q. Now, what do all of the stock offerings on this table have in common, if they have anything in common?

A. They are all offerings by rights to companies' own stockholders.

Q. In your opinion, to what extent is an offering of that kind comparable to the kind of offering that would be made annually by the trustee under the Government plan?

A. I think they are hardly comparable at all.

Q. What are your reasons for that statement?

A. Because they are offered to stockholders. That means that they are offered at a discount from the market. Those on this tabulation are offered at discounts all the way from 11 per cent up to 35 per cent, and in more than half of them on the list the discount is above 20 per cent. They are not offered at the market, in other words.

Also they are offered to a company's own stockholders through rights, and that creates to a very important degree a market for the shares being offered. The stockholders take up the rights themselves in order to maintain their percentage interest in the corporation.

Q. Mr. Emerson, I direct your attention to the fact that the largest single offering on this du Pont Exhibit 30 for identification is, I believe, the rights offering by General Motors in 1955. Am I right in that respect?

A. Yes, sir, in dollars.

[fol. 1588] Q. That offering was managed by Morgan Stanley, was it not?

A. It was.

Q. Did that offering, in your opinion, have any impact on the market for General Motors?

A. Yes, sir.

Mr. Cox: At this point, I should like to have marked for identification a two-page tabulation, headed, "General Motors Corporation, Common Stock $5 Par Value, Price Range Related to 1955 Rights Offering to Shareholders."

I believe this should be marked du Pont Exhibit for identification No. 31.

(Thereupon said document was marked Defendant du Pont Exhibit 31, for identification.)

By Mr. Cox:

Q. Mr. Emerson, do you have before you a copy of the tabulation that has been marked du Pont Exhibit for identification 31?

A. Yes, sir.

Q. Was this tabulation prepared under your direction and supervision?

A. It was.

Q. Are you satisfied as to its accuracy?

A. Yes, sir.

Q. In the last answer you gave before I marked this chart for identification, you said that in your opinion the General Motors rights offering in 1955 had had an impact on the market price of General Motors.

With this tabulation, which is du Pont Exhibit for identification 31, before you, will you please amplify that answer?

A. Well, the stock of General Motors had been selling in the upper 90's. At the beginning of 1955, the first trading day of the year it is strong. It closed that day at 105⅛. That was before any announcement of the financing.

[fol. 1589] The financing was announced after the close that day. The stock immediately opened lower the next day. The opening sales was 99; off 6⅛ points in one day because of the announcement.

If you take the price of 105⅛ the day before the announcement of the financing and relate it to a period, oh, a couple of weeks after the rights had expired, General Motors went off 11⅜ points. That is about 11 per cent. That is in spite of the fact that du Pont took up its interest in 22.6 per cent of the issue, and in spite of very heavy lay-offs by the underwriting group.

Q. What did the Dow Jones industrial average do in the same period, Mr. Emerson?

A. It went down about 1 per cent. It went off 3.66 points in that period.

Q. Do you know what percentage of the GM rights offerings was taken up by the shareholders of General Motors?

A. 81½ per cent.

Q. Does that include the exercise of subscription rights by du Pont?

A. Yes, sir.

Q. Do you have any figure that would show what the percentage was computed on any other basis?

A. Well, leaving du Pont out of it, the balance of the stockholders took up 76 per cent of the stock that was offered to them. That is on an average. That meant 59 per cent of the offering. You add 22.6 to 59 per cent, and it is 81½ per cent.

Q. Now, you have told us, Mr. Emerson, that du Pont Exhibit for identification 30 is confined to offerings of common stock that were made by corporations to their own stockholders?

A. Yes, sir.

Q. By the way, to the best of your knowledge, does this [fol. 1590] include all offerings of that kind, of 50 million dollars or more, that were made between 1936 and February 6, 1959?

A. It does.

Q. Now, in the course of your investigation did you make any study of offerings that were made by corporations not to their own shareholders, but were made for cash in the market?

A. Yes, sir.

Mr. Cox: At this point I should like to have marked for identification a table, headed, "Industrial Common Stock Offerings (Not Offered to Stockholders) $30 Million or Over, 1936 to March 10, 1959 Inclusive."

I think this should be marked for identification du Pont Exhibit 32.

(Thereupon said document was marked Defendant du Pont Exhibit 32, for identification.)

By Mr. Cox:

Q. Do you have before you a copy of the tabulation that has been marked du Pont Exhibit for identification 32?

A. Yes, sir.

Q. Was this tabulation prepared under your supervision and direction?

A. It was.

Q. Are you satisfied that it is accurate?

A. I am.

Q. Specifically, Mr. Emerson, I should like to ask you whether you are satisfied that it contains all of the industrial common stock offerings of the kind described, that is, not offered to stockholders, of $30 million or more made between 1936 and March 10, 1959?

A. It contains all that we were able to find.

Q. Now, in what respects, in your opinion, do the stock offerings that are listed on du Pont Exhibit for identification 32 differ from the rights offerings which were listed [fol. 1591] in du Pont Exhibit 30, for identification?

A. Well, in Exhibit 32 they are offerings for cash, not under rights, therefore much more comparable to the offerings that would be made by the trustees. There is no rights value in any of these offerings and new buyers had to be found for all of the issue, which would be true with the trustee offerings, so that they are definitely more comparable with the offerings that would be made by the trustee than those rights offerings.

Q. Let me direct your attention to the fact, Mr. Emerson, that this table, which is du Pont Exhibit 32 for identification, appears to be separated into two parts. The upper part contains, 1, 2, 3, 4, 5, 6, 7, 8 issues and is separated from five issues which are listed below and which are headed, "No previous public market."

Do you see that?

A. Yes, sir.

Q. And under the heading, "No previous public market" you have listed an offering by American Viscose, one by Schering Corporation, one by Campbell Soup, one by Ford Motor, and one by Universal Oil Processors. Were any of those offerings, by the way, managed by Morgan Stanley Company?

A. Yes, sir.

Q. Which one?

A. The American Viscose.

Q. Did you participate in any of the other offerings?

A. I should say we managed it jointly.

Q. Did you participate in any of the other offerings you have listed under, "No Previous Public Market"?

A. I know we participated in Universal Oil Processors. I do not remember whether we did in the Campbell Soup or not.

Q. Did you participate in any of the—strike that. [fol. 1592] Did you manage any of the offerings that are listed in the upper part of the chart?

A. The last two, General Motors and Upjohn.

Q. Did you participate in any of the other offerings?

A. I am sure we did, but I cannot speak with assurance on any particular name.

Q. Let me direct your attention to the issues that you have listed, five issues that you have listed under the heading, "No previous public market." I ask you whether in your opinion the problems involved in those offerings were comparable to the problems that would be raised by the annual offerings by the trustee under the proposed Government judgment?

A. No. They are quite different.

Q. What is your reason for that answer, Mr. Emerson?

A. Each one of these offerings, in the first place, so far as anyone knows, is a single offering, although there was an implication at the time of the Ford offering that there would be further offerings later on.

There were no stockholders. These were good companies. Investors were glad of the chance to buy the securities of these companies and there was no competition in the offering of the stocks with the amount that was already outstanding in the hands of the investors.

Q. Well, let me direct your attention specifically to the offering that was made of Ford Motor Car stock. That was a very large offering, was it not?

A. Yes, sir.

Q. Now, what are your reasons for saying specifically that the problems involved in that Ford offering were not directly comparable to the problems that would be raised by the offerings that would be made by the trustee under the Government plan?

A. Ford Company had been a household word for a great many years. Nearly everybody at one time had had [fol 1593] a Model T. People knew that the Ford family

had been most successful financially in the Ford Company. They knew nothing about the figures at all.

The only figures that were published that I know of were those filed with the State of Massachusetts and that did not include earnings statements, just a balance sheet, an annual balance sheet.

Nobody knew what the figures of the Ford Company were, but they did know that Ford was a very popular car and that it had done awfully well for the people who up to that time owned it. They, therefore, flooded in from all over, as I think Mr. Sheets testified.

There was a great deal of uninformed buying; there was a great deal of speculative buying, because people thought that with a block of this size, it would have to be priced attractively. There was a lot of foreign buying for speculation account. The underwriting group, I understand, were required to make offerings to the Ford dealers all around the country, and many of the Ford dealers felt an obligation to buy Ford stock.

It is utterly different than the case of General Motors, where there are over 200 million shares outstanding in the hands of the public, other than the stock held by du Pont and Christiana, where people have had plenty of opportunity to buy General Motors stock for years and years. It is the largest industrial company, in earnings, in the country. Certainly, there was no scarcity value, or anything of that sort, in the case of General Motors.

So it seems to me that they are not at all comparable, except that they are both in the motor business.

Q. Mr. Emerson, you referred to the fact that no figures [fol. 1594] on Ford's earnings were available. Were you referring to the period of time prior to the issuance of the prospectus?

A. Yes, sir.

Q. The prospectus did contain figures in this respect?

A. Yes, although a great many of the people who bought Ford stock didn't know how to read the prospectus.

Q. Do you know what happened to the price of the common stock of the Ford Company during the balance of the year in which that offering took place?

The offering took place in January.

A. The offering took place in January at $64.50. It was

traded over the counter for awhile, so there were no accurate records until it became listed; but, apparently it sold up over 70, slightly above 70, then went off, and about a month after the offering it was below the issue price. At the end of the year, it was at 54⅛. That was the closing price on December 31, 1956. In other words, it had gone off more than 16 per cent from the offering price to the close of the year. It would have gone off more than that if you took the top above 70.

Q. Mr. Emerson, do you have an opinion as to the factors that contributed to that decline in the price of common stock of the Ford Motor Company?

A. There were a number of them. There was a great deal of speculative buying, which never helps an issue. The block was the largest offering that had ever taken place in our financial markets, and it just couldn't be digested. And, in addition to that, there was a statement in the prospectus that the Ford Foundation, who was the seller, still had somewhat over 36 million shares which they might sell from time to time.

[fol. 1595] Q. Do you know whether there had been any change in the earnings prospects of the Ford Motor Company that contributed to that decline in this period following the offering?

A. Well, that was a period of prosperity in the motor business. I don't know how the earnings of Ford for the year 1956 compared with those of 1955. I do know that Ford went off more than General Motors did, or than Chrysler, in that same period.

Q. Mr. Emerson, let me direct your attention to the fact that among the offerings listed in the upper part of du Pont Exhibit for identification 32 there is an offering of Aluminium Limited stock in the year 1951.

A. Yes, sir.

Q. (Continuing) At 333,000 shares. Do you see that entry there?

A. Yes.

Q. Now are you aware that there were other secondary offerings of Aluminium Limited stock in the period of time covered by this chart?

A. Yes, sir?

Q. Why were those other secondary offerings of Aluminium Limited stock not included in this?

A. Because this is the only one of 30 million or more.

Q. Do you know, Mr. Emerson, taking the period of time between 1951 and the present time, in round numbers, how many shares of Aluminium Limited have been offered for sale in secondary offerings?

A. Yes, sir.

Q. Mr. Emerson, I suggest to you—I believe that there is an exhibit by the Government which shows that in that period of time, roughly shares with a market value, I think, of around 174—between 174 and 180 million dollars have been sold. Would that figure refresh your recollection at [fol. 1596] all?

A. I knew the dollar amount was about 165 million dollars. There were quite a few offerings—oh, at least a dozen—made under the consent decree.

Q. That was the litigated decree.

A. Litigation decree.

Q. You needn't bother with the figure there.

Let us take the figure of 174 million; which is the figure, the market value figure, that stays in my mind from the Government's exhibit. Is that right?

Mr. Reycraft: I think that is pretty close to it.

By Mr. Cox:

Q. Let me ask you this question, Mr. Emerson. In your study of the probable impact of the proposed Government's judgment on the market price of General Motors, did you take into consideration the facts with respect to these several offerings of stock of Aluminium Limited?

A. Yes, sir.

Q. What consideration did you give to those offerings?

A. It seemed to me that they were not particularly comparable. There were 16 offerings that I know of, and I think that list is complete, aggregating $165,846,000; in other words, an average of ten million dollars. The offerings that will be made by the trustee here of two million shares a year—if General Motors is still selling at 46, that is 92 million dollars or nine times what the annual amount distributed of Aluminium was.

Also there was no selling by distributees to complicate

the Aluminium situation; it was purely a matter of selling Aluminium stock.

In the case of General Motors, however, there would be [fol. 1597] heavy selling, as we have estimated, well over a million shares a year by du Pont stockholders.

Q. Mr. Emerson, do you have any opinion on the question of whether the offerings of the stock of Aluminium Limited over the period of time between 1951 and the present date has had any impact on the market value of the common stock of that company?

A. I believe that it has.

Q. Now let me direct your attention again to du Pont Exhibit 32 for identification, which is the table of secondary offerings; and I note that on this table you have computed at the extreme right of the table——

Do you have it before you, Mr. Emerson?

A. Yes, sir.

Q. (Continuing)—a market impact by comparing the percentage change in the average of the week's closing prices, four weeks before the offering to two weeks after the offering?

A. Yes, sir.

Q. For each issue. And then you have computed an average impact, and you have done that in two ways: One, including Upjohn, and one excluding Upjohn.

Why did you prepare the chart in that way, Mr. Emerson?

A. Well, the Upjohn impact was so much out of the ordinary that if I included it in the averages, without showing what the average would be without it, I was sure I would be questioned about it, so we showed it both ways.

I think the fair figure is the one with Upjohn, which is the higher figure. Any secondary can have an unusual impact, and Upjohn did; and I see no reason why it should be excluded from the averages. But we did show it both ways.

[fol. 1598] Q. Why did you include Upjohn in the upper part of the chart rather than in the lower part of the chart, under the heading, "No previous public market?"

A. Because it had a public market.

Q. Was there a public market for Upjohn prior to the offering?

A. Prior to the announcement of the Upjohn financing, there was a very thin market. Then the Upjohn Company split its stock 25-for-1, or rather, it wasn't a split; it was a recapitalization in another State, and an issuance of 25 shares for each old share.

The market then began to pick up, but it was still an uninformed market. Until the registration statement was filed, the only way you could know the earnings and assets of the Upjohn Company was to be a stockholder and get their annual report; it was not in any of the Services.

However, once the registration statement was filed, there became a very active market in Upjohn. Well, there is a document used in Wall Street called "the pink sheets," in which over-the-counter dealers list their bid and asked—the price they bid and the number of shares they bid for, and the same on the asked side.

After the registration statement was filed and people knew what the figures of the Upjohn Company were, the number of dealers in the pink sheets every day would run anywhere from 20 to over 40.

Well, that certainly shows an active market, so that at the time the Upjohn offering was made, and for a period of three weeks before then, there had been a very active market; you could trade almost any reasonable amount.

Q. Do those figures in the pink sheets to which you [fol. 1599] refer reflects bids and offers?

A. Bids and offers, by dealers in the over-the-counter market.

Q. Do you recall, Mr. Emerson, how the price of Upjohn moved after the secondary offering of the stock?

A. It went down—at the time of the offering—the day that Upjohn's stock was offered at 45, the over-the-counter market was right around 50. It went down quite rapidly after that; and it is now, the last I saw it, it was about 41.

Q. What percentage of the outstanding stock, if you know, of the Upjohn Company was included in that secondary offering?

A. About 17 per cent.

Q. Mr. Emerson, let me direct your attention again to du Pont Exhibit 32 for identification and to these figures that show the average impact of the secondary offerings

there listed. With Upjohn that average impact is stated to be 9.11 per cent. Without Upjohn, it is 5.7 per cent.

I now ask you to what extent, in your opinion, these percentage figures, in your view, indicate the market impact on the General Motors stock that might reasonably be expected to follow from adoption of the Government's plan?

A. Well, I think I should point out first that there are two figures for impact: One, up to the date of offering, and another, a period two weeks beyond the offering—which is the proper one to use depends on whose viewpoint you are taking—from the point of view of those who sold the stock, the left-hand one, namely, the point of view of date of offering is the right figure; from the point of view of those who bought the stock, the column at the right, is the proper figure.

Now, may I hear your question again?

[fol. 1600] Q. I am asking you to what extent these figures as to the average impact, these secondary offerings—and for the purpose of this question you can take the average impact as shown in the left hand column or in the right-hand column—I am asking you to what extent these average figures are, in your opinion, indicative of the market impact on the market price of the common stock of General Motors that might be expected to follow from adoption of the Government's plan?

A. I think they are way low.

Q. Why do you say that, Mr. Emerson?

A. In every case of these offerings, people assumed that there would be no further offering, although that might not be true in the case of Ford Motor. In the case of the General Motors offerings by the trustee, every buyer will be on notice that there is going to be a similar offering the following year, and the year after that, and the year after that, and so forth, for ten years. It will have to be stated in the prospectus, of course, so that everybody will be on notice that the first year only ten per cent of the overhang is being offered. That means that the General Motors offerings by the trustee will have a definitely larger impact than these here. Also in most cases they will be larger.

Assuming two million shares at, let us say, 46, present price, that is 92 million—well, of those at the top of the page, the only one that is larger than that is Upjohn. If

you take 36, that would be 72 million; and still the only one larger is Upjohn.

Q. In your reference to the awareness of repeated sales, have you taken into account your prior testimony with [fol. 1601] respect to Aluminium Limited?

A. I don't understand your reference.

Q. Well, you have testified that there were during this period repeated sales of Aluminium Limited?

A. Oh, yes.

Q. There was an overhang there?

A. There was. I am sorry—I should have mentioned that.

Q. Now is there any other reason why you believe that these average figures of the average impact are not truly indicative of the size of the impact on General Motors stock that might be reasonably expected to follow adoption of the Government plan?

A. The Government plan also includes all these distributions, and we have estimated that at least a million and a quarter shares of General Motors are going to be sold on the market each year by stockholders of the du Pont Company.

Mr. Cox: That is all.

Mr. Gribbon: If your Honor please, you suggested that Doctor Tepping and two of his associates that remained available would assist the Government in examination of his work papers today. May he now be dispatched to Philadelphia with those papers, with the understanding that they may be examined there at the convenience of the Government, and that Doctor Tepping will be recalled for cross examination if it proves necessary?

Mr. Reycraft: Your Honor, if we are to complete our examination at the end of this week, I don't think it is a very practical thing to do. We have continued to the end of the day to look at some of these documents and will continue to do so tonight.

I will be glad to report to your Honor as to what prog- [fols. 1602-1603] ress we are making, and I hope to give you a very favorable report.

The Court: Is that satisfactory?

Mr. Gribbon: I assume that we will be able to dispose of this tomorrow morning?

Mr. Reycraft: I will be able to tell your Honor what progress we are making.

The Court: I am sure the District Attorney will try to cooperate with us.

(Whereupon an adjournment was taken in the above-entitled cause until Wednesday, March 18, 1959, at ten o'clock a.m.)

[fol. 1604]

Transcript of Proceedings of March 18, 1959

The Court: Counsel may proceed.

Mr. Gribbon: I wonder, your Honor, if Government counsel has any report on Dr. Tepping, whether he can be released?

Mr. Reycraft: Your Honor, we are still proceeding with the documents. I may say that as far as Dr. Tepping is concerned, his testimony, I think it is a very strong possibility that we will not wish to examine him further, except with respect to the documents. There are some underlying documents which we would like to offer in evidence and if counsel would be agreeable to our offering them without Dr. Tepping being present, I think there is a strong possibility we will not have any further examination of him.

Mr. Gribbon: I am sure we can arrange something of that kind, your Honor. Can we have it be understood that Dr. Tepping will be released now, subject to recall in the future on notice if you so desire?

Mr. Reycraft: I understand the documents will remain here until they are released?

Mr. Gribbon: We can work something out on that.

The Court: Very well. The Court has no objection to that arrangement.

Mr. Gribbon: If your Honor please, we would like to interrupt briefly the testimony of Mr. Emerson that who started yesterday and put on one further stockholder witness who was unable to be here yesterday.

The Court: You may.

Mr. Gribbon: du Pont calls Mr. Paul H. Kuhns.

[fol. 1605] PAUL H. KUHNS, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gribbon:

Q. Will you give your name to the reporter, Mr. Kuhns, please?

A. Paul H. Kuhns, K-u-h-n-s.

Q. Where do you reside?

A. Ponca City, Oklahoma.

Q. What is your business?

A. I am retired.

Q. For how long have you been retired?

A. Four years.

Q. And prior to that time what was your business?

A. I was the manager of transportation for Continental Oil Company.

Q. In Ponca City, Oklahoma?

A. Yes, sir.

Q. Have you ever been employed by the du Pont Company?

A. Never.

Q. Or by General Motors?

A. No, sir.

Q. Are you an owner of common stock of the du Pont Company?

A. Yes. My wife and I own 50 shares in joint tenancy.

Q. When did you acquire those shares, Mr. Kuhns?

A. We bought 25 shares in 1950 and then we thought of it as a good investment so we bought another 25 shares in 1957.

Q. Now, do you or Mrs. Kuhns own any stock of General Motors Corporation?

A. No, sir.

Q. Does any member of your family own any stock in General Motors?

A. Our daughter originally bought ten shares of General Motors back in the 40's and I believe that now amounts to some 60 shares.

Q. Are you financial adviser for your daughter, Mr. Kuhns?

A. Yes, to an extent.

[fol. 1606] Q. Are you generally familiar with the terms of the proposal which the Government has put before the Court in this litigation, Mr. Kuhns?

A. Well, I have read about it and I have had the notices from the du Pont Company, so to a degree I am.

Q. In the light of your knowledge of the Government proposal in this case, have you been giving consideration to whether you should take some action with respect to your holding of 50 shares in the du Pont Company?

A. Yes. In our position the 50 shares is quite important. It means that the present $6 dividend rate, an income of $300 a year or $25 a month, and it would seem to me, first, if this distribution takes place, thereafter du Pont would have to cut their dividends because they would not have the income from General Motors.

When they do that the price of the stock would go down, Also, as I understand it, we would have to pay a tax on the General Motors stock that would be distributed and that is something that is of serious import to us.

I believe that tax would be—well, on 50 shares we would get some 60 odd shares of General Motors, and General Motors is about 45, or something like that now. So our tax would amount to—well, let's see, they are going to distribute that on a ten-year basis, so we would get about six or seven shares a year.

Well, you would pay somewhere around five or six hundred dollars taxes over a period of ten years or, in other words, fifty or sixty dollars a year extra taxes.

And to me that isn't the right kind of thing, I mean, I do not want to. On the other hand——

Q. Have you considered—let me interrupt a moment—[fol. 1607] have you considered, Mr. Kuhns, selling your du Pont stock because of this litigation?

A. Yes. My wife and I have talked about that, whether we should do that.

Q. Have you arrived at any conclusions?

A. Well, not finally. If I knew what Judge LaBuy was going to decide I would know better.

The Court: He does not know himself yet.

By the Witness:

A. Then I would know better what I would want to do.

By Mr. Gribbon:

Q. What do you mean by that, Mr. Kuhns? What would you do?

A. Well, I am no expert on finances or the stock market, but to me it seems a cinch that if they make this distribution and they have to get rid of all this stock over a ten-year period, why, the price of du Pont and the price of General Motors will both go way down.

If that is going to happen I would like to sell mine now and use the money for some other purpose, try and invest it some other way. Now, actually, we have not wanted to sell du Pont. We think it is a good company.

On the basis at which we bought this stock it gives us a return of around four and a half per cent, which is satisfactory. From the standpoint of the return, which is what in our situation is of most interest to us, we would like to keep the stock; but if this forced sale or distribution—I confess I do not see the need of it or the reason for it, but, whatever it is, if it is going to happen, why, I think we would be better off to sell our stock. I wish I knew which way to jump.

Q. You would have a substantial capital gains tax to [fol. 1608] pay if you were to sell that, would you not?

A. Yes, and I don't like that, but, after all, that capital gains tax—of course, I am in a low income tax bracket, anyway, and the capital gain tax would not be any more, or approximately the same as the income tax I would pay if they send me this General Motors stock, which I do not want.

Q. Would you be saying you would be prepared to pay the capital gains tax now rather than paying the income tax over the 10-year period?

A. Well, yes, I think I would. I mean, if this is going to happen I would be better off to sell my du Pont, pay the capital gains tax, and invest the money some other way.

Q. Suppose the capital gains tax that you pay is just about equal to the income tax you would have to pay over the 10-year period?

A. That is right.

Q. In the light of that, why do you suggest you would be better off to sell your du Pont stock?

A. Well, because I get more money out of du Pont now. I could sell it now for around two hundred twenty-five or

two hundred thirty-dollars, and if they do what they say, that price may drop to one hundred twenty-five dollars or one hundred dollars. If it does that we would be the loser on holding it.

I only wish I knew what the decision was going to be.

Q. Supposing you don't know what the decision is going to be, and it is entered? Have you formed any judgment as to whether you will be able to sell du Pont stock at its fair value after such a decision were entered?

A. I don't think I would be able to sell it after—I mean if the decision is entered and it forces the distribution of General Motors stock, I feel sure I will take a loss on my du Pont stock.

[fol. 1609] Q. Why is that?

A. Because the prices go down and your dividends will go down.

Q. You think your only safe course would be to find out what the decision was going to be and sell beforehand?

A. I would love to be able to know.

Q. Have you considered, Mr. Kuhns, how you would advise your daughter with respect to her holdings of General Motors stock in the light of this litigation?

A. Yes. Again, there, I haven't known just how to advise her. If General Motors stock is going to be sold to the extent of many millions of shares over the next ten years, it would be smart to sell General Motors stock right now.

Q. And have you decided on that course of action?

A. Not fully, but I am thinking of suggesting to her that she sell her few shares of General Motors, because the money she has in it is of considerable importance to her, and she could take that money and—well, put it in the building and loan or savings account, something that would give her about as good a return as she is getting on General Motors; and she might be better off. She certainly would be better off if this distribution goes through.

Mr. Gribbon: I have no further questions, your Honor.

Mr. Reycraft: No questions.

Mr. Gribbon: Thank you very much, Mr. Kuhns.

The Court: You are excused.

(Witness excused.)

SUMNER B. EMERSON, called as a witness on behalf of defendant E. I. du Pont de Nemours and Company, having been previously duly sworn, resumed the stand and testified further as follows:

[fol. 1610] Direct Examination—(Continued)

By Mr. Cox:

Q. Mr. Emerson, when we adjourned yesterday, I was asking you some questions about du Pont Exhibit for identification 32. That is the table of secondary offerings. Do you have a copy of that with you?

A. Yes, sir.

Q. Yesterday, in one of the last answers you gave before we adjourned, you made a comment on the figures that are shown on du Pont Exhibit 32, for identification, with respect to the average market impact of the secondary offerings which are listed in the upper part of that exhibit; and that answer, which appears at page 1599 of the transcript, reads as follows:

> "Well, I think I should point out first that there are two figures for impact; one up to the date of offering, and another a period two weeks beyond the offering. Which is the proper one to use depends on whose viewpoint you are taking. From the point of view of those who sold the stock, the left-hand one, namely, the point of view of the date of offering is the right figure; from the point of view of those who bought the stock, the column at the right is the proper figure."

Now do you recall that answer?

A. Yes, sir.

Q. I should like to direct your attention to your statement that from the point of view of those who sold the stock, the impact figure taken or measured by the period of time up to the offering price is the right figure, and ask you what your reasons were for that statement?

A. Because that represents the price which the sellers will receive, although from that would have to be deducted the expense of marketing.

Q. To the extent that the offering price was below or [fol. 1611] at a discount from the market price, and therefore prevailed, the owners of the stock which was being sold would suffer a loss?

A. That is correct. An actual loss, not a paper loss.

Q. An actual loss.

Directing your attention to the impact figure that covers the period of time that extends two weeks after the offering, would that figure also be significant, or would it not, to any person who for any reason sold his stock in the interval of time elapsing between the date of offering and two weeks after the offering?

A. Well, the market price is of great significance to anyone who for any reason has to sell; and if the market has gone off after the offering of these secondaries, and some holder of the security involved for any reason has to sell in that period, he receives that much lower price.

Q. Let me direct your attention to the secondary offerings that are listed on du Pont Exhibit 32 for identification, Mr. Emerson; and with those offerings before you, I should like to ask you whether, in your opinion, any of the secondary offerings that are listed in that exhibit created market problems that are comparable to market problems that, in your judgment, would be created by the execution of the proposed Government Plan?

A. None of them.

Q. Now I note on Exhibit 32, as you have testified, you have computed the average impact of these offerings considered collectively.

In the light of your previous answer, I ask you whether, in your opinion, the average figure is meaningful and, if so, how, in determining the probable market impact of any particular offering of any particular stock in the future?

[fol. 1612] A. There is no such thing as an exact yardstick for measuring the impact of a marketing operation. The figures, all show that there is an impact there, but you can't predict in advance exactly what it is going to be. There is no such thing as a slide rule computation.

For instance, in that exhibit, the first six items listed at the top of the page are all roughly the same size; they are between thirty and forty million dollars; and yet the market impacts—well, in the impact at the time of offering, Caterpillar Tractor was decimal point three, whereas Monsanto was six point three. You simply know that there is going to be an impact, but you cannot tell exactly what it is going to be.

Q. In your opinion, by averaging the market impacts of

the first seven of those secondary offerings that have been listed in the upper part of du Pont Exhibit 32 for identification, would you have been able to predict with certainty what the impact of the eighth one, the Upjohn offering, was?

A. No. We had no knowledge of what the impact in the Upjohn offering was going to be.

Q. At least the computation of the average impact for the earlier offerings did not provide a mechanical test of what the impact of the Upjohn offering was?

A. That is correct.

Q. Again directing your attention to Exhibit 32 for identification, Mr. Emerson, and to the average impact figures which are shown there, both with respect to period of time up to the offering price and the period of time two weeks after the offering, I ask you whether, in your opinion, the impact of the proposed Government plan on the market price of common stock of General Motors would be greater or less than the average impacts computed on the [fol. 1613] exhibit?

A. In my opinion, it would be materially greater.

Q. What are your reasons for that answer?

A. In the first place, each offering by the trustee would be larger than any of those shown at the top of the Exhibit 32, with the exception of Upjohn. In the second place, the offerings by the trustee would be competing: they would be made in a market that was filled with offerings of General Motors stock, because du Pont stockholders were selling General Motors stock for tax reasons. We estimated that that would be a minimum of a million and a quarter shares a year that du Pont stockholders would be selling—a million and a quarter shares of General Motors. And, third, under the Government plan, there would be one of these offerings every year for ten years. The overhang would be terrific.

Q. Mr. Emerson, considering the question of the impact of the Government's plan of market price of General Motors, did you consider the extent to which there may be a latent demand for the common stock of General Motors in the market?

A. Well, there is always a latent demand for any good stock at a price.

Q. I am asking you to what extent you considered the Is that what you mean?

question of whether there was a latent demand for General Motors?

A. I am sure that there would be a very large latent demand for General Motors.

Q. In your opinion, is there a large latent demand for General Motors at the current market price?

A. No, sir.

Q. In your opinion is there any unsatisfied demand at the present time for common stock of General Motors at the present market price?

A. No sir. I have never heard of any. I have never known [fol. 1614] of anyone who had difficulty in buying General Motors if they wanted to buy it.

Q. When you answered that there is a latent demand, that answer is keyed to the price at which the stock might be purchased in the market, is that correct?

A. That is correct.

Q. Now did you consider in your study, Mr. Emerson, what the demand might be for the common stock of General Motors on the part of institutional purchasers of various kinds?

A. Yes, sir.

Q. Did you make any investigation, for example, of the holdings of life insurance companies in General Motors stock?

A. Yes, sir.

Q. What did that investigation disclose to you?

A. It was not life insurance companies. It was all insurance companies, including the fire insurance companies. We added up all of the listings of General Motors holdings carried in a book published by the United Statistical Associates called Corporate Holdings of Insurance Companies.

At the end of 1955, insurance companies in the aggregate held 2,387,145 shares.

At the end of 1957, which is the latest figure available, those holdings had shrunk somewhat to 2,351,572 shares.

Q. Did you attempt to make any investigation of the holdings of investment companies in General Motors stock?

A. Yes, sir.

Q. What did that investigation disclose?

A. That showed a larger shrinkage. At the end of June, 1955, investment companies held an aggregate of 3,108,000

shares of General Motors; and at June 30 last year, which is again the latest figure available, they held 2,035,000 shares.

In other words, their holdings had decreased by 34½ per cent.

[fol. 1615] Mr. Reycraft: Are you reading from an exhibit, Mr. Emerson?

Mr. Cox: I am about to ask him what the source of that was.

By Mr. Cox:

Q. What is the source of those figures that you gave?

A. Vickers' Guide to Investment Company Portfolios.

Q. Do you know how many insurance companies were covered in that computation?

A. You mean investment companies?

Q. Investment companies, yes.

A. 250; 190 open end and 60 closed end.

Q. Did you ever make an attempt to determine from any source, Mr. Emerson, what common stocks were favored investments of the investment companies in terms of dollar volume?

A. Well, the Vickers' Guide publishes what they call the favorite 50. They list the 50 most popular common stocks in investment company portfolios in order of their total aggregate market value.

Q. Did you examine those figures to determine whether there had been any change in the holdings by investment companies of General Motors stock?

A. Yes, sir.

Q. What did that investigation disclose?

A. Well, going back to the June 30, 1955, at that time the investment companies as a whole and for all stocks, rather, the total value of the favorite fifty, was $2,600,000,000.

At June 30, 1958, that had increased to $3,400,000,000.

That is the time during which the holdings in shares of General Motors had gone off 34 per cent. General Motors dropped from second place in popularity on the list to 13th. [fol. 1616] Out of the two hundred fifty investment companies, only 77 at June 30 last year had any General Motors. That number had shrunk from 86 companies out of the 250 three years earlier.

The percentage of the total outstanding stock of General Motors that was held by these investment companies in the favorite fifty in the same period decreased—this is in number of shares—from 1.13 per cent to .72 per cent. In other words, less than three-quarters of one per cent.

General Motors had the lowest percentage of its shares held by investment companies of any of the industrial stocks listed in the favorite fifty.

Mr. Reycraft: Are you going to offer this exhibit, Mr. Cox?

Mr. Cox: I think not. There is no exhibit. Mr. Emerson is testifying as to the basis of his opinion.

Mr. Reycraft: He is not testifying from facts which he knows himself, I understand.

Mr. Cox: He is testifying from documents which he has examined, which one of your witnesses verified as being accurate.

By Mr. Cox:

Q. This information that you have just given us also came from the Vickers publication, did it not?

A. Yes, sir.

Q. Now, in addition to examining the material found in Vickers Guide to Investment Company Portfolios, did you examine any other studies relating to the holdings of investment companies of General Motors stock?

A. Yes. There was a more recent study put out by Arthur Wiesenberger & Company, as of September 30, 1958.

[fol. 1617] Q. What is Arthur Wiesenberger & Company?

A. They are a firm in New York that specializes in information on investment companies.

Q. What did that study disclose?

A. They went to 28 of the more important investment companies, and asked in each case what their five favorite issues were, in dollar amount of investment.

The 28 companies each listed five stocks; of course, there was a fair amount of duplication. There were 66 different stocks mentioned by the 28 companies. General Motors wasn't mentioned by any of them.

Q. Mr. Emerson, there has been some testimony during the presentation of the Government's evidence in this case

about an organization known as One William Street Fund, Inc. Do you know what the organization is?

A. Yes, sir.

Q. What is it?

A. It is a large investment trust that was formed in May, 1958.

Q. Did you examine any published information that has been issued by One William Street Fund, Inc. to determine whether that investment company owns any General Motors stock?

A. I examined their prospectus when they made the original offering, and I examined their year-end statement as of December 31, 1958.

Q. What did that examination disclose with respect to their ownership of General Motors common stock?

A. Well, it showed that when the company was formed, they started out with $185 million in cash, plus some investments because they were merging with an already existing investment company.

At the end of the year, which would be about seven months later, they had invested a very large proportion of that cash, of the $185 million which they had received.

[fol. 1618] Q. How much of it or any part of it had been invested in the stock of General Motors?

A. They hadn't invested any of it in the stock of any motor company, although five of their directors are affiliated with the Ford Motor Company.

Q. Mr. Emerson, on the basis of the consideration that you have mentioned in your previous testimony, have you formed an opinion as to what effect the ten annual trustee offerings under the Government's Plan and the distribution to the du Pont stockholders under the Government's Plan would have upon the supply of the common stock of General Motors available in the market for purchase? Have you formed an opinion on that point?

A. It would greatly increase it.

Q. Have you formed an opinion as to what the condition of the market would be in terms of supply as a result of this offering?

A. The market for ten years would be glutted with General Motors stock.

Q. Now, in your opinion, what effect would this condition have on potential buyers of General Motors stock?

A. Well, any informed investor would know that this condition was going to continue for a full ten-year period. There would be no hurry for him to buy. Even if the first year, the market for General Motors went off definitely, so that based on today's standards it looked like an attractive offering, nevertheless that investor would know that he didn't have to hurry. It would be the same way the next year and the next year, and so on, for ten years.

Mr. Cox: At this point, I should like to have marked for identification a one-page table, headed, "Decline in Market Price of General Motors Common Stock Dur-
[fol. 1619] ing Selected Periods 1946-1957," and I think that this should be marked du Pont Exhibit for identification No. 33.

This is in your Honor's book.

(Thereupon said document was marked Defendant du Pont Exhibit 33, for identification.)

By Mr. Cox:

Q. Mr. Emerson, in the course of your study of the probable market impact of the Government Plan, did you consider whether there had ever been periods in the recent past when the market price of the common stock of General Motors has declined substantially?

A. Yes, sir. We checked the market movements of General Motors for the period since the war, and we found five periods during that time when General Motors had gone off in value more than 20 per cent in a period of less than six months.

Q. Do you have before you a copy of the tabulation that has been marked du Pont Exhibit for identification No. 33?

A. Yes, sir.

Q. Was that prepared under your supervision and direction?

A. It was.

Q. Are you satisfied as to its accuracy?

A. Yes, sir.

Q. Would this tabulation reflect the period that you have just referred to when there was a decline in price of the common stock of General Motors?

A. Yes, sir.

Q. Mr. Emerson, in the course of your study, did you discover any other periods prior to the period of time covered by du Pont Exhibit 32, for identification, when there had been substantial declines in the price of the common stock?

A. Well, I know that the high of General Motors in the Spring of 1929 was 91¾. In the middle of 1932, which is about three years later, it had gone down to 7⅝.

[fol. 1620] There was a pretty steady decline, although there were periods in there where there were minor movements upward.

Then, again, in 1937, in a period of four and a half months, General Motors went from 60⅛ to 28⅝; in other words, it shrunk to less than half.

Mr. Reycraft: Are you reading from Exhibit 33, Mr. Emerson?

The Witness: No.

Mr. Cox: No, he is not. This is testimony from some notes he has.

Mr. Reycraft: These are your own notes?

The Witness: Yes.

Mr. Cox: The postwar decline is on the exhibit.

By Mr. Cox:

Q. In your opinion, Mr. Emerson, is it reasonable to assume that in a ten-year period following the entry of any judgment in this case, it will always be possible for the trustees to make the schedule of sales at reasonable prices as related to the then-prevailing market price of General Motors?

A. I would think it would be very improbable.

Q. What are the reasons for that answer?

A. In the period of ten years there are bound to be occasions again where the market will be quite soft, where it would be not only difficult to get a good price because the market is going down, but at a time like that the whole psychology of the market is pessimistic and it is very difficult to get investors to absorb large amounts of securities in a declining market.

I think it would be extraordinary if there weren't several periods of that type during a ten-year period.

[fol. 1621] Q. You testified in describing assumptions you made with respect to the provisions of the Government plan that you were aware that the plan authorizes the trustee upon application of the Court to defer or postpone a sale; do you recall that?

A. Yes, sir.

Q. Let me ask you, Mr. Emerson, this question. In the event the trustee found it necessary to delay a sale because of prevailing market conditions, would that or would that not have any effect on the ease with which later sales might be made?

A. Well, it would bring that much more impact onto the subsequent sale, and whenever a block of stock is known to be overhanging the market does not rally very much anyway.

The subsequent sale would be twice the yearly amount unless it were re-delayed, so that the impact later would be increased.

Q. On the basis of your study of the question of the probable impact of the Government proposal on the market price of the common stock of General Motors, have you made an estimate of the probable amount of that impact that might reasonably be expected to follow the adoption of that plan?

A. Yes, sir.

Q. In making that estimate, have you taken or considered the question of the price earnings ratio of General Motors in relation to the price earnings ratio of industrial stocks generally?

A. Yes, sir.

Q. Did you consider or not the yield on General Motors common stock in relation to the yield on industrial common stocks in general?

A. Yes, sir.

Q. Now, taking into account therefore all the considerations that you have mentioned in your prior testimony, [fol. 1622] can you tell us what your estimate is as to the amount of the probable impact on the market price of the common stock of General Motors that might reasonably be expected to follow adoption and execution of the Government proposed plan?

A. Well, I think I should say that nobody can be too

categorical about it. As I think I said before, there has never been in the history of the United States anything comparable to this at all, so that there are no exact yardsticks and all one can do is get together the figures and arrive at the best judgment he can on it.

My estimate would be that it would be somewhere in the area of 20 to 25 per cent below what General Motors would have sold except for such a court order.

Q. Does that answer mean, Mr. Emerson, that you are now estimating that if the plan should be put into execution the present price of General Motors would be reduced in the area of 20 to 25 per cent?

A. It might or might not. If the rest of the market stood still, then I would expect that General Motors, once this plan got under way, would go off in price from the present level somewhere in the area of 20 to 25 per cent.

On the other hand, if the market is very strong and went ahead 20 to 25 per cent, and General Motors stood still, while it had not in that case gone off in price, nevertheless the impact is there.

Q. This is an estimate that is directed to a comparison of what the price of General Motors would have been if no such plan had been executed?

A. That is correct.

Q. Compared with the price that would be in effect if the plan should be executed, is that correct?

A. Yes, sir.

Q. Now, in expressing your opinion as to this estimate, Mr. Emerson, do you mean that throughout the period of [fol. 1623] time the plan was being carried out, the price of General Motors common stock would always be 20 to 25 per cent below what it otherwise would have been?

A. Not necessarily. You have various kinds of markets at various times and I would think that this figure of 20 to 25 per cent might be exceeded in the periods when the market was thin or tending downward and the impact might be lower than 20 to 25 per cent if the market were very broad and buoyant.

It will vary from year to year and it will vary during the part of any one year.

Q. Mr. Emerson, let me direct your attention again to the secondary issues that are listed on du Pont Exhibit 32

for identification. Do you have a copy of that exhibit before you?

A. Yes, sir.

Q. That exhibit measures the market impact to a period of time that ends two weeks after the offering, so there is nothing on the exhibit that shows the movement of prices for any period of time subsequent to two weeks after the offering; that is correct, is it not?

A. That is correct.

Q. Now, isn't it a fact that the market price of a number of stocks that were involved in these secondary offerings did recover to its former level within a short period of time after the offering was completed?

A. Well, I think I would have stated it a little differently. I would have said that given a period of, let's say, a month or more after the offering, so many other factors come in—business factors, general market factors, that it is very difficult to measure the impact for a period of more than, say, a couple of weeks after the offering.

The impact may be there but you cannot pinpoint it.

[fol. 1624] Q. But in the case of some of these offerings, however, would it be accurate to say that the market impact was short term in its duration?

A. Yes, sir.

Q. Well, now, in your opinion, is it reasonable to expect on the basis of experience with these secondary offerings that the impact of the Government's plan on the market price of General Motors would similarly be short term in its duration?

A. Well, the Government's plan brings in factors that were not applicable to the markets of these secondaries at all, so that there is no comparison.

Q. Now, what factors do you refer to in that answer?

A. In the first place, most of the offerings by the trustee—the offerings by the trustee would be larger in dollars than most of these secondary offerings.

In the second place, they would be taking place in a market where du Pont stockholders were consistently selling General Motors stock.

And in the third place, this is going on and on for ten years, and the overhang is going to be a very important factor.

Q: Mr. Emerson, in reaching your conclusion, did you consider whether as a matter of underwriting mechanics and procedure it would be feasible to sell the approximately 20 million shares of General Motors in the ten-year period as provided for in the Government plan? Would that be feasible?

A. Oh, yes—at a price.

Q. Well, your study was really directed to the question of what price sales could be made at?

A. Yes, sir.

Q. Mr. Emerson, I should like now to turn to a different subject, which I think you testified yesterday was covered in your study, and that is the question of the impact of [fol. 1625] the Government proposal on the market for the common stock of the du Pont Company.

Was that subject included in your study?

A. Yes, sir. But may I make one further observation with regard to your last question?

Q. Yes.

A. I think it is highly questionable that it would be feasible to make the trustee sales of General Motors stock under the limitations that are in the Government's proposal; in other words, a fair market value.

Q. What is your reason for that?

A. I don't think General Motors will be selling at a fair market value at all.

Q. Have you examined then, Mr. Emerson, the question of the effect of the adoption of the Government's proposal on the market of the common stock for the du Pont Company?

A. Yes, sir.

Q. In the course of that investigation, did you consider whether the adoption of the Government proposal would create any probability that any of the present holders of the du Pont Company might sell their stock in the du Pont Company?

A. Yes, sir.

Q. What opinion did you reach on this point, if you reached an opinion?

A. We reached the opinion that there would be very heavy selling of du Pont stock.

Q. Now what were the reasons that led you to that opinion, Mr. Emerson?

A. The tax impact on du Pont stockholders, if they were taxed on the General Motors that they would receive, would be so heavy that in their own best interests many of them would prefer to sell du Pont instead.

Mr. Cox: At this point I should like to have marked for identification a two-page tabulation, which is headed, "E. I. [fol. 1626] du Pont—General Motors Case, Comparison of Dividend Tax Versus Capital Gains Tax for du Pont Common Stockholders."

There are two pages to this tabulation, and it will be marked du Pont Exhibit 34 for identification.

(Thereupon said document was marked defendant, du Pont Exhibit 34 for identification.)

By Mr. Cox:

Q. Mr. Emerson, do you have before you a copy of the table that has been marked du Pont Exhibit 34 for identification?

A. Yes, sir.

Q. Was this table prepared under your supervision and direction?

A. It was.

Q. Were you satisfied with its accuracy?

A. Yes, sir.

Mr. Cox: I should now like to have marked for identification a 1-page tabulation headed, "E. I. du Pont de Nemours & Company Common Stock, Record of Price Range and Trading Volume, 1934 through December 31, 1958, New York Stock Exchange."

This should be marked du Pont, Exhibit 35 for identification.

(Whereupon said document was marked Defendant du Pont Exhibit No. 35, for identification.)

By Mr. Cox:

Q. Do you have a copy of the tabulation that has been marked du Pont Exhibit 35 for identification, which is a tabulation of price range and trading volume?

A. Yes.

Q. Was this also prepared under your supervision and direction?

A. It was.

[fol. 1627] Q. Are you satisfied with its accuracy?

A. Yes, sir.

Q. Mr. Emerson, you testified a moment ago that because of certain tax problems, certain shareholders of du Pont Company would find it to their financial advantage to sell the common stock of du Pont Company, rather than to receive the stock of General Motors by way of distribution.

Will you, using du Pont Exhibit 34 for identification and du Pont Exhibit 35 for identification, explain to the Court your reasons for that opinion?

A. We felt that we had to have a table which would show where the two tax impacts met, the tax impact on receiving the General Motors stock and paying a full income tax on it, and the other one, the alternative one, of selling the du Pont and paying a capital gains tax; so we worked out this table.

Does your question involve explaining the table?

Q. Yes. Explain the table, if you will, please, Mr. Emerson.

A. Well, the left-hand column is obviously the tax bracket of the particular individual; the second column is the value of General Motors stock that a holder of one share of du Pont would receive over the 10-year period if General Motors was at 35. In other words, it is $35 times 1.38; and the value of that would be the same, no matter what the income tax bracket of the recipient would be.

The next column shows the income tax on that distribution.

Then the next column shows, assuming various prices for du Pont, where the break-even price is, and if the stockholder had purchased his du Pont above these break-even points, it would then be to his advantage to sell his du Pont rather than to hold it and get the General Motors and be subject to the tax on the General Motors.

[fol. 1628] The right-hand part of the exhibit shows the same thing for General Motors at 40.

Q. Mr. Emerson, did you attempt to make any estimate

as to how much of the stock of du Pont might be held by persons who would find it to their financial advantage to sell du Pont rather than to accept the distribution of General Motors shares?

A. We don't know, of course, what the cost bases of the du Pont stockholders would be; but we were able to work out a minimum figure or what we consider a minimum of the stock that might have come into the market.

Q. How did you work out that figure, Mr. Emerson?

A. Well, the National Analysts showed that the average tax for the 1 to 100 share-holders was 30 per cent.

Taking that, just as the lowest bracket—then if you turn to Exhibit 34; 30 per cent, that would be the bottom line—now let us say that du Pont is selling at 170, which it might be. The break-even point there in that case for a person in the 30 per cent income bracket would be 86.27, which means that if he paid above 86.27 for his du Pont, even though he is in the minimum tax bracket, it would be to his advantage to sell du Pont, pay the capital gains, and not be subject to the regular income tax on the distribution.

Well, then we look back over the market record to see how long it was since du Pont had sold at 86.27, and all the shares sold on the New York Stock Exchange since 1952 have been above that price.

Q. Are those figures you have just mentioned the figures that are reflected on du Pont Exhibit 35, for identification?

A. Yes.

[fol. 1629] There were, by adding up the figures for the respective years, 5,678,000 shares traded since 1952, all of which would be above 86.27; and there were about 1,465,000 above that price in 1951 and 1952.

Now, if you add those figures together, the National Analysts figures showed that 48 per cent of the stock of du Pont, ex-holdings of Christiana and Delaware, were in the hands of individuals or trustees, so we take that volume figure and take 48 per cent of it to find out how much of it was presumably bought by individuals. That comes out to 3,430,000 shares. So that, on that basis, we would think that certainly 3,430,000 shares, the holders of that amount would find it to their advantage to sell their du Pont, and there would be a great deal more than that where we don't have any data for computing it, simply because we don't

know the cost bases of the du Pont stockholders. But there must be a great deal of stock that was bought by people in higher brackets, bought at lower prices, that would qualify for this capital gains tax treatment.

In fact, it is interesting to note that if you are in the 87 per cent bracket, with du Pont at any price we computed it, you would be better off to sell du Pont than to get General Motors, no matter what your cost was, even if it was less than zero.

Q. Mr. Emerson, in one of your answers a moment ago, you referred to the figures that were computed by National Analysts with respect to the amount of the stock of du Pont that was beneficially owned by persons who were beneficiaries under trusts. Did you consider whether there were any conditions that might lead trustees who held du Pont stock for the benefit of others to sell that stock rather [fol. 1630] than to accept the distribution of General Motors stock?

A. Yes, sir.

Q. Did you reach an opinion on that point?

A. The trustee, in looking after his beneficiary, would go through the same sort of a computation as one of the witnesses did yesterday to see whether it would be to their advantage to hold du Pont and pay the tax on the General Motors or to sell the du Pont and pay a capital gains tax and re-invest the proceeds in something else.

In addition to that, we felt that there would be a great deal of stock held by trustees that would come onto the market for tax reasons; but there are stronger reasons than that, cumulatively stronger, why trustees would probably decide, in many instances, to sell du Pont.

Q. What are those reasons?

A. Well, under the laws of many states, unless the trust instrument gives the trustee power to determine what is income and what is corpus—and I understand that very few of such trust deeds do give the trustee that power—under the laws of many states, including important states, from a trust point of view, the trustee would have to consider the General Motors as income.

Now obviously, it is not income; it is a distribution of assets.

But the trustee who is serving two people, the life

tenants and their remaindermen, is then put in a difficult position. If he treats this distribution of General Motors as income and pays it out to the life tenants, the remainderman has lost part of his principal.

I would assume that if trustees were to decide either way, they would get lawsuits from the party that lost out. [fol. 1631] I would think that the trustees would be in a very difficult position.

They would probably have to analyze every trust instrument where there was any du Pont in the holdings to see what their position would be.

It is certainly my judgment that many of the trustees, rather than face the difficulties, and, what seems to me the unfairness of paying out part of the assets to life tenants, would sell the du Pont.

Q. Have you attempted, Mr. Emerson, to make an estimate in any quantitative terms of how many shares of du Pont held by trustees might be offered for sale because of the considerations that you have mentioned?

A. I estimated that out of the nearly 11 million shares that are held by trustees that somewhere in the area of a third to a half would come onto the market and an attempt would be made to sell them.

Q. You have spoken of considerations that might lead both individual holders of record and trustees to sell du Pont stock rather than accept General Motors stock in distribution.

Are there no offsetting factors that might lead either group of holders to retain du Pont stock, Mr. Emerson?

A. Yes, there are.

Q. Did you consider those offsetting factors in reaching your estimate?

A. Yes, sir.

Q. What offsetting factors did you consider in that connection?

A. Well, there were four offsetting factors.

One of them would be that if you decide to sell your du Pont, you pay a capital gains tax right away, at least within approximately a year.

If you hold your du Pont and receive the General Motors, [fol. 1632] your tax is spread over the 10-year period. That might deter some people from selling du Pont.

Another reason would be that, assuming that the Frear bill has not passed, and assuming that the Court were to accept the Government's proposal, I think many stockholders of the du Pont Company would hesitate to sell their du Pont in the hope that if the Frear bill hasn't passed, maybe it will in another year or two, or whatever. In other words, I think some of them would tend to delay any action on their du Pont.

I think that some of the larger holders of du Pont might set up a personal holding company. There is a lot of red tape and legal problems involved, and I would doubt if that would be done by smaller stockholders. But I would assume that at least some of the larger stockholders would take that step, and in that way they could continue to hold their du Pont and get the General Motors at the corporate rate; in other words, a tax of 16.3 cents a share.

Then, I think, there are a number of people that are very loyal to the du Pont Company. They have held the stock for years. They respect it. They know that it is one of the finest corporations in the country, and they would be very reluctant to sell the stock, even though from a dollar and cents point of view it might be to their advantage to do so.

So, I think there are those four offsetting factors.

Q. Did I understand you to say that you had taken those into consideration?

A. Yes, sir.

Q. Now, have you made an estimate, taking those factors into consideration, as to the total amount of shares of the common stock of du Pont Company that might probably [fol. 1633] be offered for sale if the Government plan should be adopted?

A. Well, I estimate that a minimum of three and a half million shares would be offered by individuals, and somewhere between three and a half to five and a half million shares by trustees, which would make an aggregate of seven to nine million. Now, that is before these offsetting points.

I can't tell exactly how much stock would actually be sold, but even if you assume that these four offsetting factors reduce the selling pressure by 50 per cent, you would still have around four million shares to be sold of a stock

that for the last two years the volume on the New York Stock Exchange had been just a little over 800,000 shares in round lots.

The Court: Court stands recessed for ten minutes.

(A short recess was taken.)

The Court: Counsel may proceed.

By Mr. Cox:

Q. Mr. Emerson, in considering the effect of the offerings for sale of the du Pont common stock, to which you have testified just before the recess, do you consider at all whether there would be a corresponding increase in the demand for the du Pont stock that would serve to absorb the offerings that might be made by individual holders and trustees?

A. Yes, sir.

Q. What opinion did you reach on that point?

A. That there not only would be a vastly increased supply of du Pont in the market, but that there would be an offsetting decrease in demand.

Q. What are the reasons for that opinion?

[fol. 1634] A. For the same reasons that people would want to sell, people in similar circumstances would hesitate to buy. In other words, individuals, if they bought du Pont, would be buying into a tax problem. Trustees, if they bought du Pont, would be buying both into a tax problem and into a problem of allocation between corpus and income.

Q. Have you considered whether there would be an increased demand for the stock of du Pont Company by institutional purchasers?

A. Well, there are certain types of institutions that would not be particularly affected, such as the tax-free institutions, corporations, including insurance companies, personal holding companies, investment trusts.

Their tax problems would be minor, and in the case of tax-free institutions would be nonexistent. So that they would be willing to come into the market and absorb some of this increased supply if they felt the stock was sufficiently attractive.

Q. Did you reach an opinion on whether that institu-

tional demand could be expected to absorb the additional supply at the level of the price of the du Pont stock that now prevails in the market?

A. I see no reason why they should. They would have no incentive. If they want to buy du Pont now, they can buy it.

In order to get them to increase normal purchases, I would assume that there would have to be a definite price incentive.

Q. In considering this question of the probable demand for du Pont common stock in relation to the additional supply, do you consider whether there was any difference in [fol. 1635] the conditions of supply as between the common stock of the du Pont Company and the common stock of General Motors?

A, I did. The factors are quite different. If the supply of General Motors is increased, and because of the increase in supply the price goes down, it would reach an equilibrium where enough new buying is induced by that price to offset the increased supply which we estimated would be in the area of 20 to 25 per cent below where the price would otherwise have been.

In the case of the du Pont problem, there is the increased supply and decreased demand and, therefore, the price incentive would, in my opinion, have to be larger in the case of du Pont than in the case of General Motors.

Q. In this connection, Mr. Emerson, do you know whether there is any difference in terms of volume between the market for the common stock of the du Pont Company and the market for the common stock of General Motors in normal times?

A. Yes, sir. The market for General Motors is a very much broader market—a very much more active market than the market for du Pont. The volume figures on the New York Stock Exchange would run, oh, nearly ten times as many shares.

Q. On the basis of the considerations that you have discussed in your testimony, Mr. Emerson, have you made an estimate as to the amount of the impact on the price of the common stock of du Pont Company that might reasonably be anticipated to follow from adoption and execution of the Government's proposed plan?

A. Well, I would think that the incentive to sell du Pont would come at the beginning of the period and at the beginning of the period I would estimate that du Pont would [fol. 1636] have to sell a minimum of 25 per cent under what it would otherwise have sold, and the figure might be definitely larger than that.

Q. Now, you said in that answer that in your opinion the impact would be greatest at the beginning of the period?

A. Yes, sir.

Q. What period are you referring to?

A. The beginning of the ten-year period.

Q. In your opinion, would the impact tend to decrease as the period grew toward end?

A. Yes, sir. The reason for that is that as distributions of General Motors take place the future tax problems of du Pont, the stockholders of du Pont, decrease, and also on the other side of the market there would be less of a reason for not buying du Pont.

Q. Mr. Emerson, in reaching this estimate which you have just given us have you taken into account the fact that the distribution of the General Motors stock might be expected in a quite normal way to reduce the market price of du Pont—the general distribution of General Motors stock might be expected to reduce the price of du Pont stock because of its distribution or partial liquidation of assets and of earning power? Did you take that into account?

A. Yes, sir. Every time there is a distribution of General Motors the stock would go down in price in an amount roughly equivalent to the value of the General Motors distributed, so that during the ten-year period du Pont would be going down in price anyway from these distributions of assets in earning power.

My figure of a minimum of 25 per cent impact is above any such natural decreases in the market value of du Pont. [fol. 1637] Q. Mr. Emerson, in expressing the view that you have given us in your testimony so far, with respect to the probable consequences of the Government's proposed Plan on the market price, both of the common stock of General Motors and on the price of the common stock of the du Pont Company, what assumptions have you made

with respect to the dividend policy that du Pont would follow in the period of time during which the Plan was being carried out?

A. I have assumed that du Pont would continue a $6.00 dividend, and that any distributions would be over and above that. Now, of course, as distributions take place and the earning power of du Pont diminishes, that $6.00 dividend will also diminish; but I did not visualize du Pont reducing its present dividend and substituting General Motors stock for any part of it.

Q. Mr. Emerson, if you should change that assumption and assume, instead, that during the period in which the Plan is being executed du Pont should eliminate its cash dividend altogether and make all dividend distributions entirely in the shares of General Motors, to what extent, if at all, would that changed assumption change the opinion that you have expressed, first with respect to the impact of such a Plan on the market price of General Motors?

A. Would you state that question again, please?

Q. I have asked you to change your assumption, Mr. Emerson, which you have testified to in your previous answer, and to assume, instead, that du Pont does not maintain its normal or $6.00 cash dividend, but instead throughout the period of time in which this Plan is being executed pays its dividend in the same amount but pays it entirely in stock of General Motors.

[fol. 1638] Mr. Reycraft: (Addressing the witness.) Are you reading from your notes now, Mr. Emerson?

The Witness: I am not reading anything.

Mr. Cox: He is not reading anything. I am reading.

Mr. Reycraft: You are reading?

Mr. Cox: I am reading.

Mr. Reycraft: I thought Mr. Emerson was reading.

By Mr. Cox:

Q. Now, we will start again now that we have satisfied Mr. Reycraft's curiosity.

I have asked you to assume or to change the assumption that you have stated in your previous answer, and to assume that while this Plan is being carried out du Pont maintains a $6.00 dividend but does not pay it in cash, but,

instead, pays it entirely in stock of General Motors; do you understand that assumption?

A. Yes, sir.

Q. Now, I asked you whether if you changed the assumption in that respect it changes the testimony that you have given with respect to the impact that the plan would have on the market price of General Motors?

A. It does.

Q. In what respect?

A. It increases it.

Q. Why?

A. Because with no cash coming in to du Pont stockholders, just receiving General Motors, they have to do more selling. They would have no income on which to live and no income with which to pay taxes from that particular investment. Therefore, since all they are getting is General Motors, it is fair to believe that the selling of General Motors would be increased.

Q. Now, with the same changed assumption, let me ask you whether on the basis of that changed assumption the [fol. 1639] opinions that you have expressed with respect to the impact of the plan on the market price of du Pont would be changed in any respect?

A. It would.

Q. In what respect would they be changed?

A. I think the impact of such a program on du Pont would be even worse than on General Motors. The du Pont stockholder would then be getting nothing but General Motors. He has to live and he has to pay taxes and rather than—if he does not like a stock that pays dividends in the stock of another company, I think he would be much more inclined to sell du Pont and re-invest elsewhere, and I think——

Q. It is true—I am sorry. Go ahead.

A. (Continuing) I think that the trustees would take the same point of view. A trustee then would see his trust getting no cash income at all from that investment.

Q. It is true that on this assumption, however, the tax rate of the du Pont shareholder would not be increased by additional income represented by the GM shares, is that not so?

A. Well, I am assuming that it is still distributed, let's say $6 worth of General Motors share of du Pont per year.

Q. So his tax rate would not be increased?

A. That is correct.

Q. In this connection, Mr. Emerson, do you recall when you were being examined by Mr. Reycraft, during the presentation of the Government's case, that you were asked whether in the past it had been the practice of Morgan Stanley to give advice to General Motors on matters relating to financing and the raising of capital?

A. Yes.

Q. And do you recall that you told him that Morgan Stanley had in the past given advice of that kind?

A. Yes, sir.

[fol. 1640] Mr. Cox: May it please the Court, at this point I intend to have marked for identification a document which is not in the Court's notebook, and we will give a copy to the Clerk.

I should now like to have marked for identification a document dated March 31, 1955, headed "General Motors Corporation," Certain Considerations Stock Dividend versus Cash Dividend."

The document contains three pages and should be marked du Pont Exhibit 36 for identification.

(Thereupon said document was marked Defendant du Pont Exhibit No. 36 for identification.)

By Mr. Cox:

Q. Mr. Emerson, do you recall that shortly before this trial, the Government served upon Morgan Stanley a subpoena duces tecum requiring them to produce in this Court certain correspondence between Morgan Stanley and General Motors relating to stock offerings and related financial matters?

A. Yes, sir.

Mr. Cox: Mr. Reycraft, this document was one of the papers produced pursuant to that subpoena.

By Mr. Cox:

Q. Mr. Emerson, do you have before you this 3-page memorandum or letter which has been marked du Pont Exhibit for identification 36?

A. Yes, sir.

Q. Do you have a copy of it?

A. Yes.

Q. On the third page of my copy, I note that there are the initials "R.H.B." Do you know who "R.H.B." is or was?

A. Robert H. Baldwin.

Q. Who is Robert H. Baldwin?

[fol. 1641] A. Robert H. Baldwin was at that time a member of our staff and is now a partner.

Q. Do you know what the occasion for the writing of this memorandum was?

A. Yes, sir.

Q. What was it?

A. A substantial stockholder of the General Motors Company raised a question with the management of the General Motors Company as to the wisdom of their offering common stock to their stockholders and ventured the opinion that rather than finance in that way, it would be better for the General Motors Company to cease all cash dividends and to pay dividends only in stock, and then they wouldn't have to finance.

Q. You have described a suggestion made by a stockholder of General Motors, is that correct?

A. To the General Motors Company.

Q. Yes. Now, what was the relationship between that suggestion and this memorandum which has been marked for identification du Pont Exhibit 36?

A. I don't remember the conversation, but I think the General Motors Company wanted some suggestions from us, first, as to the wisdom, as it seemed to us, of such a policy; and second, they could get from that certain things that they could use in answering the stockholder.

I think that was the motive.

Q. This was the proposal, as I understand your testimony, that had been made, or a suggestion that had been made by a stockholder of General Motors was that it should pay dividends in its own stock?

A. Yes, sir.

Q. And accumulate for capital purposes the cash that would have otherwise been used to pay the—

A. Yes, sir.

Q. Mr. Emerson, I should like to read to you a portion [fol. 1642] of this document which has been marked du Pont Exhibit 36 for identification, and I must ask you to listen to what I read, because I wish to ask you a question about it.

I am going to start reading from the foot of Page 1 of the document:

"From the stockholders' standpoint, there are the following disadvantages to stock dividends:

"A. In view of large number of small stockholders, we believe the Company has an obligation to pay a reasonable proportion of earnings in cash dividends.

"1. The Company has paid cash dividends in every year since its organization in 1917 and with one minor exception has paid only cash dividends. This record has undoubtedly influenced smaller investors in purchase of stock.

"2. Many share owners count on cash dividends as a source of income for living expenses.

"B. We believe that the above arguments are true for charitable and educational institutions and many investment trusts. They are not bothered by cash considerations, but want the steady income.

"C. Dividends in stock confuse many small stockholders, especially women, and are, at best, inconvenient. Definite nuisance to small stockholders to buy or sell scrip, adjust cost of stock, handle new certificates, figure capital gain or loss in case of sale, etc.

"1. Chief complaints received by companies who have used stock dividend from small stockholders echoing these sentiments.

[fol. 1643] "D. If stockholders sell stock to realized income, ownership position is decreased.

"1. Brokerage costs on odd-lot sale of shares are high. For example a 2% stock dividend to the holder of 50 shares and 100 shares would be 1 and 2 shares respectively. Assuming a market price of $100 a share, the cost of sales would be:"

And then there is a table setting forth and showing the brokerage, transfer tax and fee, total cost and per cent of sale price.

"2. Forced selling of stock dividend by stock-holders seeking cash will affect market adversely.

E. Stock dividend complicates administration of trusts where interests of current beneficiary are opposed to those of remaindermen. This is particularly true of older trusts."

Now, Mr. Emerson, to your knowledge, was this memorandum sent to General Motors in 1955?

A. Yes, sir.

Q. Now this advice relates, as I indicated a moment ago, does it not, to a distribution of the income in stock of the distributing company?

A. Yes, sir.

Q. In your opinion, would the considerations that I have read from this letter bearing the disadvantages of that course, apply if the distribution of the dividend was made not in stock of the distributing company but in the stock of another company?

A. All of the disadvantages that are mentioned in this memorandum would apply to the distribution of the stock of another company, plus the additional very real disadvantage that such a distribution would be taxable, where-[fol. 1644] as a distribution of stock, of a stock dividend in one's own stock is not taxable.

Q. Mr. Emerson, let me ask you to make another assumption with respect to dividend policy that the du Pont Company might follow during the period of time that the proposed Government plan is being carried out.

Let us assume that du Pont maintained a dividend rate at approximately the same level as prevailed in recent years but that instead of paying that dividend entirely in cash or entirely in stock of General Motors, it paid the dividend partly in cash and partly in stock of General Motors.

Do you understand that changed assumption?

A. Yes, sir.

Q. Now on the basis of that changed assumption, if you assume a plan of that kind, to what extent would the opinions that you have expressed with respect to the impact of

the market price of the stock of General Motors be changed?

A. We estimated the impact, assuming a continuation of a $6 dividend in cash, in distributions above that at 20 to 25 per cent. If all of the dividends on du Pont stock were to be in stock of General Motors, with no cash, we estimated the impact would be at least 25 to 30 per cent.

Now if you are going to have something in between, the impact would be in between.

Q. Taking this assumption that I have just stated to you again, would that lead you to change the opinions that you have expressed with respect to the impact of the plan on the market price of the common stock of the du Pont [fol. 1645] Company?

A. Our estimate of the impact on the common stock of du Pont, assuming the $6 dividend and distributions above that, was a minimum of 25 per cent. If those distributions were to be entirely in General Motors stock, with no cash dividend, I estimated that impact would be somewhere in the area of 30 to 35 per cent.

Now if you are going to have part cash and part stock, something in between, the impact would be in between.

Q. Mr. Emerson, at the risk of tiring you with changed assumptions, I would like to put one more to you, if you can follow it.

Assume that the Government plan should be modified by eliminating the requirement that the trustees sell approximately 20 million shares over a ten-year period, and instead the plan required now 63 million shares of General Motors now owned by du Pont should be distributed to du Pont stockholders in ten equal annual installments, with the further requirement, have you followed me up to this point, Mr. Emerson?

A. Yes, sir.

(Continuing)—with the further requirement that Christiana and Delaware should be required to distribute their allocable portion of the shares they received from du Pont to their shareholders; and let us add one more assumption, and that is that Christiana would also be required to distribute to its shareholders 535,000 shares which it owns directly.

I apologize for the complication of that changed assumption, but do you understand it?

A. There would be an ultimate distribution to stockholders of six million three hundred and some odd thousand shares a year, with no sales by the trustee.

[fol. 1646] Q. No sales by the trustee?

A. Right.

Q. Now, if the Plan should be modified in these respects, what, in your opinion, would the effect of that kind of a Plan have on the market price of General Motors and on the market price of du Pont during the period of time it was being carried out?

A. Well, our estimate was that it wouldn't vary materially from the first estimate that we made, but it might be a little smaller. In other words, this is on the basis of ten-year distribution?

Q. Yes.

A. Say 20 per cent on General Motors and 20 to 25 per cent on du Pont.

Q. Those would be the changes in your estimate that you think would follow from a Plan that required no sales but simply a distribution?

A. Yes, sir.

Q. For what reasons would you change your estimate based on that kind of change in the Plan, Mr. Emerson?

A. There would probably be more stock, bound to be more stock coming into the market from the stockholders, but there would be no forced selling by the trustee.

Q. Do you think that would make some difference in the impact?

A. Yes, sir. In other words, under the Government's Plan as it now stands, all of the stock that goes to the stockholders of Christiana and of Delaware—I mean, all of the stock that would go to Christiana and to Delaware and the stockholders of Delaware would be sold.

Now, under your hypothetical case, it would not be sold. It would be distributed to those companies and through those companies to their ultimate stockholders.

[fol. 1647] Now, a lot of that stock would never be thrown onto the market. The stockholders of Christiana and the stockholders of Delaware would do a certain amount of

selling, but I think the impact of that would be less than the impact of the forced sales by the trustee.

Q. Let me ask you one more question that involves a changed assumption, and then I promise not to pursue this subject further.

Take the Government Plan as presented to the Court, which involves the annual sales by the trustee and the annual distributions by the trustee, and assume that instead of being carried out in ten years, that Plan is extended over a twenty-year period.

Do you understand that change?

A. Yes, sir.

Q. To what extent would that change in Plan lead you to modify the conclusions that you have stated to the Court with respect to the impact of the Plan on the market price of General Motors and on the market price of du Pont?

A. Well, taking General Motors first, the sales by the trustee, instead of being 2 million shares a year approximately would be 1 million shares a year.

The distribution to du Pont stockholders would be half as large.

Now, over a twenty-year period, the tax on those distributions would theoretically be the same as if they were made over ten years. But it would be spread over a twenty-year period, and therefore there would be less necessitous tax selling of General Motors stock by du Pont stockholders.

So that, in my opinion, the impact on the market for [fol. 1648] General Motors, instead of being 20 to 25 per cent, would be in the area of 12 to 15 per cent.

Q. What effect would it have on the opinion you have formed with respect to the impact of the plan on the price of the stock of the du Pont Company?

A. In the case of the du Pont stock, if a person sells du Pont, they pay their capital gains tax. They pay it promptly. Whereas, if they hold their du Pont and receive General Motors over a period of twenty years, they have got a longer time. The tax is going to be due, a certain amount each year for twenty years.

I think there would be fewer people, therefore, that would sell du Pont. I would think that the problem of a trustee would not be materially different, his legal problem. His

tax problem would be different, the tax problem of his beneficiaries.

All in all, I would estimate that the impact on the du Pont market would be at least 15 per cent.

Q. Mr. Emerson, in your study, did you consider what effect, if any, the adoption of the Government's plan proposed by the Government would have on the ability of du Pont Company to issue and sell additional common stock while the plan was in effect?

A. Yes, sir.

Q. What opinion did you reach on that point?

A. On which company?

Q. I am talking about du Pont now.

A. Well, during the period of these distributions, we have estimated that du Pont stock would be selling, at least at the beginning of the period, at least 25 per cent below [fol. 1649] what it would otherwise have sold.

I should think that would be a very severe handicap on the du Pont Company to do financing, equity financing.

If they were to offer common stock in a depressed market, heavy layoffs would be necessary, and du Pont stockholders, probably for the reasons we have already given, would be reluctant to buy more du Pont and be buying into a tax problem.

Therefore, I would think a larger proportion of the rights would be sold on the market than would be true in a normal situation, materially more.

It would be difficult to find buyers for the stock that those rights represented because individuals don't want to buy du Pont stock and buy into a tax problem. Trustees don't want to buy du Pont stock and buy into a tax problem plus a legal problem.

It would have to be sold at a price that the types of institutions where the tax problem is very small or non-existent would come in and take up, probably, a large percentage of the issue.

That would mean a very low price, and I would think that the handicap to the du Pont Company would be so severe that it would almost prevent it, at least in the first part of the period.

Q. Now, let me direct your attention to the situation of

General Motors in the event the Government plan should be adopted.

In your opinion would the adoption and execution of the Government plan have any effect on the capacity of Gen- [fol. 1650] eral Motors to issue and sell additional common stock?

A. Yes, sir. The result would be the same, but for somewhat different reasons.

General Motors stock would be under pressure throughout the 10-year period, and we have estimated that that would be in the area of 20 to 25 per cent.

If General Motors Corporation were to offer stock to their stockholders, I don't know whether the du Pont Company would be allowed to take up rights or not. I am assuming that they would not, under the Court order, if the Government's proposal is accepted.

But, if the du Pont Company can't take up their 22½ per cent of the stock, Christiana can't take up theirs, that means a very substantial part of the stock could not be taken up by stockholders. It would have to be laid off to others.

The General Motors Company would be financing in a market that is already under heavy pressure, and to have between 20 and 25 per cent of their stock from one source dumped onto the market, the new stock, would make it a very difficult operation.

I can't say that neither company could do it. I think they could. The difficulties would be so great and the price that they would receive would be so low that I would think they would hesitate to do it.

They would know that the stockholders who are unable to take up their rights would be selling in a depressed market. I can't speak for the companies, but I certainly see that the handicap to the financing would be very great.

Q. Now, in your opinion, what would be the effect of [fol. 1651] these handicaps upon the financing position and practices of the two companies?

A. You mean what they would do if they——

Q. Yes.

A. Well, they could suspend all cash dividends. They could sell some assets. They could decline to expand where they otherwise would have expanded.

They could borrow from banks, whether that was wise financing or not. It would change their method of operation.

Q. They could issue debt securities of one kind or another, possibly?

A. Yes.

Q. And they might be able to issue preferred stock, might they not?

A. I don't think that this would handicap either company in their selling debt securities.

It wouldn't handicap the General Motors Company in selling preferred stock. It would very slightly handicap the du Pont Company in selling preferred because that big asset would no longer be in the du Pont Company. That asset at the present time, based on market, is about 27 per cent of the du Pont stock.

Q. Mr. Emerson, permit me to ask you two general questions about the assumptions that you made in your consideration of these matters to which you have testified on direct examination.

What assumption did you make with respect to the position that General Motors might hold in the automotive industry during the period throughout which the Government plan was being carried out?

A. We have assumed in estimating these impacts that the General Motors Corporation continued to hold the present position that it does hold of preeminence in the automobile industry.

[fol. 1652] Q. Can you tell us what assumption you made in reaching your opinion with respect to whether General Motors would continue to operate substantially in its present form and on its present diversified basis?

A. We have assumed that it would.

Now, even though the present examination—if that is the right word—of the General Motors Company by the Antitrust Department were to result in no action, if that trial or newspaper trial or anything like that is going on, it unquestionably has a very real effect on the market for the stock of the company affected. If that were to be taking place during the ten-year period, the impacts that I have estimated here would be too low.

Q. But your consideration of this subject was not based on any assumption that events of that kind would occur?

A. We did not take them into consideration because they were too nebulous at the present time.

Q. I think I neglected to ask you one question that related to your testimony as to the effect of the Government plan on the capacity of both du Pont and General Motors to do additional equity financing in the ten-year period covered by the plan.

Let me ask you this, Mr. Emerson: Suppose the Government's proposal should be carried out over a period of 20 years instead of 10 years. To what degree, if at all, would that lead you to change the answers you have given with respect to impact of the plan on capacity of the two companies to do equity financing?

A. Well, the difficulties of doing the equity financing would be lessened, but the period would be doubled.

Whether it would be possible for General Motors and [fol. 1653] the du Pont Company to do equity financing—it would be possible, but it would be such a handicap that I don't know whether they would do it or not, and the period of that existence of that handicap would be doubled.

Mr. Cox: At this point, may it please the Court, I should like to offer into evidence the exhibits that have been used during the direct examination of Mr. Emerson and that have heretofore just been marked for identification.

Mr. Reycraft: I have no objections.

The Court: They are admitted.

(Said documents, so offered and received, were marked Defendant du Pont Exhibits 27 through 36, inclusive.)

Mr. Cox: I think that concludes the direct examination—oh, just a moment.

(Whereupon the du Pont co-Counsel conferred.)

By Mr. Cox:

Q. Mr. Emerson, in our last series of questions and answers with respect to the capacity of the two companies to do additional financing, I think I used, and perhaps you used, the words "equity financing."

I intended to refer to "common stock financing" and I assume you intended to make your answers——

A. I thought that that was what you meant, and I answered it on that basis.

Q. May the questions and answers both apply to common stock?

A. Yes, sir. I answered preferred stock separately, even though preferred stock is an equity security.

[fol. 1654] Mr. Cox: That concludes the direct examination.

The Court: The Court will recess at this time.

(Thereupon a recess was taken in the above-entitled cause until 2:00 o'clock p.m. of the same day, Wednesday, March 18, 1959.)

[fol. 1655] Before Hon. Walter J. LaBuy, Wednesday, March 18, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to adjournment.

Present: Same as before.

Mr. Bushby: If the Court please, I would like to ask Mr. Emerson a few questions in behalf of Christiana and Delaware.

SUMNER B. EMERSON, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination:—(Continued)

Mr. Bushby: I would first like to mark for identification as Christiana Exhibit 4 the annual report of Christiana for the year ended December 31, 1958.

(Thereupon said exhibit was marked Defendant Christiana Exhibit No. 4 for identification.)

Mr. Bushby: For the record, I would like to point out on the balance sheet contained in that report, in the middle of the report, the figure at which du Pont common stock is carried is not the figure which is the tax base of Christiana for that stock, but the tax base figure was a figure that

Mr. Emerson gave in his testimony the other day of $71,649,102.

[fol. 1656] I would also like to point out for the record that the figure at which the 535,500 shares of General Motors is carried on that balance sheet is the tax base that Mr. Emerson stated the other day.

I would like to offer Christiana Exhibit 4 in evidence.

The Court: Any objection?

Mr. Reycraft: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Christiana Exhibit No. 4.)

Mr. Bushby: I would like to have marked for identification as Christiana Exhibit 5, the annual report of Delaware Realty & Investment Company, for the year ended December 31, 1958.

(Thereupon said document was marked Defendant Christiana Exhibit No. 5 for identification.)

Mr. Bushby: I would like to offer it in evidence.

The Court: Any objection?

Mr. Reycraft: No objection.

The Court: It is admitted.

(Said exhibit, so offered and received in evidence was marked defendant Christiana Exhibit 5.)

By Mr. Bushby:

Q. Mr. Emerson, in answering Mr. Cox's questions as to estimated market impact of sales which would take place if the Government's proposed decree were issued and put into effect, did you have a range of probability of impact in mind, a range of price effect?

A. I testified on the impact of General Motors that it would be in the bracket 20 to 25 per cent; that the impact on du Pont would be a minimum of 25 per cent.

[fol. 1657] You can't pinpoint those things, and where there was some uncertainty in my own mind as to the best estimates, I took the lower figure.

Q. You took the lower of the per cent impact figure?

A. Yes, sir.

Q. Have you had, at our request, a tabulation made of the asset loss, the estimated asset loss, to Christiana from putting into effect the proposed Government decree?

A. Yes, sir.

Q. According to your estimates, and at other estimates of impact.

Mr. Bushby: I would like to mark for identification Christiana Exhibit 6, a tabulation headed, "Christiana Securities Company Total Realized Loss in Asset Value Resulting from Sale of GM Stock Under Government Plan and at Various Sales Prices for GM Stock."

(Thereupon said document was marked Christiana Securities Exhibit 6 for identification.)

By Mr. Bushby:

Q. Have you a copy of that exhibit before you?

A. Yes, sir.

Q. Mr. Emerson, would you explain the tabulation, in general?

The Court: Are you referring to Exhibit 6?

Mr. Bushby: Exhibit 6, yes. The one relating to Christiana.

The Court: I have it.

By Mr. Bushby:

Q. That assumes, does it not, as shown in the first line [fol. 1658] of figures, that the worth of General Motors stock is a constant figure; that is, you are taking the General Motors as owned by Christiana at $46 a share.

A. That is its present market, as of last night.

Q. And in the second line, you are assuming the sales at different market prices, is that correct?

A. Different discounts from that price.

Q. And you have testified, have you not, on questioning by Mr. Cox, that in your view, the discount would be that represented under the column headed "20 Per Cent," and the column headed "25 Per Cent"?

A. In that area, yes, sir.

Q. And then below the gross sales price at those dis-

counted prices appear other items on the loss or cost to Christiana——

A. I couldn't hear that.

Q. (Continuing)—items of cost or loss to Christiana—four items.

A. Yes.

Q. Market loss, the cost of the sales.

What is in the cost of the sales?

A. Well, we assumed an underwriting cost of $1.50. It might have to be higher than that—a dollar and a half a share.

Q. Plus Federal Transfer Taxes?

A. That is included in there, too.

Q. Then you are assuming the dividend tax that Christiana would have to pay on the receipt of G.M. from du Pont?

A. Yes, sir.

Q. As the third of those items.

Then you have calculated the Capital Gains Tax on sales by Christiana?

A. Yes, sir.

Q. So that looking at your column under the '25 Per Cent," you have calculated the realized loss of carrying [fol. 1659] out the proposed Government decree to Christiana alone as $362,412,000.00 is that correct?

A. It means that they would get $362,412,000.00 less than what the value of the stock would be ex any such order from the Court.

Mr. Bushby: I would like to mark for identification, as Christiana Exhibit 7, the tabulation headed "Delaware Realty & Investment Company, Total Realized Loss In Asset Value Resulting From Sale of G.M. Stock Under Government Plan at Various Sales Prices for G.M. Stock."

(Thereupon said document was marked Defendant Christiana Exhibit 7, for identification.)

By Mr. Bushby:

Q. Referring to Delaware and Christiana Exhibit 7 for identification, was this another computation that you had made, Mr. Emerson, at our request?

A. Yes, sir.

Q. And does that give the same story for Delaware that you have described in the case of Christiana?

A. It does.

Q. Now looking again at Christiana Exhibit 7 for identification, the next to the last line, there is an additional item, is there not, that was not on the tabulation for Christiana?

A. Yes, sir.

Q. And would you state what that item is?

A. Delaware Realty owns—I have forgoten what the percentage is of Christiana—but it is taking that percentage and applying it to the figures in the bottom line of the preceding exhibit to show the percentage of that loss that comes over into Delaware through its partial ownership of Christiana.

Q. So now tracing the column under the "25 per cent" impact, marked impact, you calculate the total loss, a [fol. 1660] realized loss to Delaware from carrying out the proposed Government decree at $153,566,000, is that correct?

A. Yes, sir.

Mr. Bushby: I would like to mark for identification as Christiana Exhibit 8 a tabulation headed "Christiana and Delaware combined total realized loss in asset value resulting from sales of GM stock under Government plan at various sales prices for GM stock."

(Thereupon said document was marked defendant Christiana Exhibit No. 8 for identification.)

By Mr. Bushby:

Q. Mr. Emerson, referring to Christiana Exhibit 8 for identification, is that another tabulation you have made at our request?

A. Yes, sir.

Q. And that simply combines, does it not, the figures on the previous two exhibits.

A. Well, except that it does not pick up that special line that you asked about on the Delaware exhibit.

Q. That is necessarily eliminated in combining the losses?

A. Yes, sir.

Q. I am now looking at the last item under the column

headed "25 per cent." What is the total loss you expect Christiana and Delaware together will realize from carrying out the proposed Government decree?

A. $397,578,000.

Mr. Bushby: I would like to offer the three exhibits, Christiana Exhibits 6, 7 and 8 in evidence.

Mr. Reycraft: I object, your Honor. We haven't seen any of the underlying data, and I don't know what goes into [fol. 1661] the making of these exhibits. I don't know what they represent.

The Court: You can find out on the cross examination.

Mr. Reycraft: I will try.

Mr. Bushby: This is not based on any underlying data. It is simply based on the testimony previously given.

Mr. Reycraft: This represents solely the witness' opinion.

Mr. Bushby: That is correct. But I would like to qualify that. You will notice some other columns here showing some impacts of other percentages. The witness has had those calculated.

He is not testifying that there will be a 40 per cent impact, as the last column will show, or testifying that there will be a five per cent impact. He is testifying to the 20 and 25 per cent impact.

He has simply made the computations at other impacts as an aid to the Court.

Mr. Reycraft: There is an implication, it seems to me, in these exhibits from all of these figures that this is what the witness' opinion is.

By Mr. Bushby:

Q. Mr. Emerson, is it your opinion that the impact, the result of which is shown in the columns of these exhibits headed 20 per cent and 25 per cent, will take place?

A. Yes, sir. Also I testified under certain conditions that it might be 30 or 35 per cent.

Q. This is simply a computation——

Mr. Reycraft: Isn't it purely hypothetical and just a mathematical computation?

[fol. 1662] The Witness: Just a mathematical computation of how it would work out.

Mr. Reycraft: It doesn't even represent your opinion?

The Witness: Yes, it does.

Mr. Reycraft: In part or in whole?

The Witness: It is my opinion if the circumstances brought about a 25 per cent, let's say, impact on the market for General Motors, that it would cost Christiana Securities Company $362,000,000.

Mr. Reycraft: That isn't an opinion. That is mathematics, is it not?

The Witness: I don't know the legal definition.

Mr. Reycraft: I didn't think that was a legal question. You are merely saying that if it goes down 25 per cent this is what it would cost.

The Witness: Yes, sir.

The Court: They are received in evidence.

(Said documents, so offered and received were marked defendant Christiana Exhibits 6, 7 and 8.)

By Mr. Bushby:

Q. Mr. Emerson, have you also had made at our request a pro-forma income statement for Christiana and Delaware, assuming the Government's proposed decree were carried out, and Christiana and Delaware reinvested the proceeds of the sale of the GM stock they now have or would receive through the distributions?

A. Yes, sir.

Mr. Bushby: I would like to mark for identification as Christiana Exhibit 9, a statement headed "Christiana Securities Company Pro-Forma income statement assuming [fol. 1663] completion of forced GM Sales and the Reinvestment of the Proceeds therefrom under Taxable Distribution of such Shares."

(Thereupon said document was marked Defendant Christiana Exhibit No. 9, for identification.)

By Mr. Bushby:

Q. Have you Christiana Exhibit 9 for identification before you, Mr. Emerson?

A. Yes, sir.

Q. Would you explain the results you give at the bottom of the tabulation?

A. This was an attempt to compute the prospective income of Christiana Securities at the end of the 10-year period after the distributions of General Motors had taken place, and assuming that general market conditions continued as they now are, and the net after taxes and expenses of the various yearly sales would be invested in stocks in the Dow-Jones average at their present yield, which is 3.27 per cent.

Q. What does the exhibit show the pro-forma income on that basis, annual income, would be?

A. The pro-forma income on that basis at the end of the 10-year period with those assumptions would be $49,424,678.

Q. How would that compare with the actual 1958 income for Christiana?

A. The 1958 income was $67,495,671. Therefore, it would mean a 26.8 per cent reduction in income.

Mr. Bushby: I would like to mark for identification as Christiana Exhibit 10, a tabulation headed, "Delaware Realty & Investment Company Pro-Forma Income Statement Assuming Completion of Forced GM Sales and Reinvestment of the Proceeds Therefrom Under Taxable Distribution of Such GM Shares."

[fol. 1664] (Thereupon said document was marked Defendant Christiana Exhibit No. 10, for identification.)

By Mr. Bushby:

Q. Mr. Emerson, do you have Christiana Exhibit No. 10 before you?

A. Yes, sir.

Q. Does that do for Delaware Realty & Investment Company the same sort of calculation that was contained in the previous Exhibit 9 in the case of Christiana?

A. Yes, except that allowance has to be made for the decrease in the income from Christiana.

Q. What does that show as to the income of Delaware following the carrying-out of the Government's plan?

A. A reduction of 26.6 per cent. I think it should be pointed out in these documents that we assumed that du Pont ex-General Motors would earn $5.00 a share. It earned a little under that, $4.71 in 1958 ex-General Motors

income. But it had earned more than that in the two preceding years, and $5.00 a share earnings seemed a fair figure.

We assumed that du Pont would then pay approximately its usual percentage of its earnings in dividends. The assumption used was 65 per cent, so that that meant we took into these computations a dividend from du Pont of $3.25 a share.

Mr. Bushby: I would like to offer these exhibits, Christiana Exhibits 9 and 10, in evidence.

The Court: Any objections?

Mr. Reycraft: I understand that these exhibits are similar to Exhibits 6, 7 and 8, and are merely mathematical computations based on certain assumptions?

The Witness: That is correct.

[fol. 1665] Mr. Reycraft: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked Defendant Christiana Exhibits 9 and 10).

By Mr. Bushby:

Q. Mr. Emerson, in the case of the asset calculations, Christiana Exhibits 6, 7 and 8, nothing is shown there by way of an item of loss for any reduction in the value or market price of the du Pont stock owned by either Christiana and Delaware, is there?

A. There is none. The only loss is from the forced sales of the General Motors at a reduced price, because of the market impact.

Q. Mr. Emerson, I would like you to make a different assumption now. I would like you to make the assumption that legislation is passed which would permit a tax-free distribution of the General Motors shares by du Pont, which would then require the recipient to spread or apportion his tax base cost over the shares of du Pont he retains and his shares of General Motors he receives.

I would like you to assume that under such legislation there is a single tax-free distribution by du Pont of a whole block of 63 million shares of General Motors.

Secondly, I would like to have you assume that there is a Court order entered at the request of the Government requiring Christiana, Delaware and the stockholders of Dela-

ware to hand their stock over to a trustee and require the trustee to make ten annual equal sales of that stock, and that there will take place other sales of General Motors [fol. 1666] stock distributed in that period for whatever reasons that you think such sales would take place.

I would first like to ask you if, under such an order, you think that there would be sales of the stock received by du Pont stockholders other than Christiana and Delaware and the stockholders of Delaware?

A. Yes, there would be.

Q. From what source would they come, in your opinion?

A. Well, 43 million approximately shares of General Motors would be divided among the du Pont stockholders proportionately at one time.

Now, the stockholders of du Pont bought du Pont because they liked du Pont; and some of them might feel that they had all the General Motors they wanted. Some of them may not like General Motors.

For a variety of different reasons, even though there is no tax impact, there would be some selling of General Motors in addition to any impact from the sales by the trustee.

Q. I don't want to be mysterious. You understand that my hypothetical question is directed to legislation such as the Frear Bill which has been introduced in the Congress?

A. Yes. I understood that this distribution would be tax-free.

Q. Yes. Now, have you formed an opinion as to the effect upon the market value of General Motors stock of the carrying-out of such a decree under such legislation?

A. Yes. It initially would be in the area of 15 per cent, in my opinion.

Q. 15 per cent off?

A. Yes. Well, unless the rest of the market went up 15 per cent, and then it could stand still.

Q. 15 per cent against what General Motors would otherwise sell at any given time?

A. That is right, yes, sir.

[fol. 1667] Q. Have you an opinion how much General Motors would sell off, if any, following the initial period of selling by other recipients of the GM stock besides Christiana, Delaware and the stockholders of Delaware?

A. Well, as I understand your question, you are assuming sales by the trustee regularly.

Q. Right, ten annual sales.

A. Ten annual sales, yes.

The largest part of the General Motors selling by du Pont stockholders would come the first year.

If, for any reason, they don't want to hold du Pont, they presumably would sell it within a reasonable length of time.

Q. I understood your answer related to the first period, the first part of the period, the 15 per cent.

A. My 15 per cent estimate was for the first part of that period.

Q. Now, what is your estimate for the latter part of the period after that selling is over?

A. You would still have the annual impact of the trustees' sales, and my estimate of the impact in that case would be in the range of 10 to 15 per cent.

Q. Now, in making your estimate, you have made certain assumptions, have you not, as to present conditions continuing, as to the same price levels in the stock market, as to there being no substantial change in the automobile industry, and that the status of General Motors in the industry will not worsen, is that correct?

A. That is correct, all of those are assumed.

Q. There have been some severe declines in the stock market, have there not, since World War II?

A. Yes, sir.

Q. There have been severe declines in the price of General Motors stock in the 12 years or more since World War II?

A. Yes, sir.

[fol. 1668] Q. If those declines occur again at a time when the trustee's sales were taking place, would not the market impact be greater than that you have testified to here?

A. Yes.

Q. You have testified that trustees' sales will hamper equity financing by General Motors?

A. Yes, sir.

Q. Isn't there some chance that that would impair General Motors position in the motor car industry in the next ten years?

A. From that cause alone it could happen. If General

Motors isn't free to do the type of financing that it ought to do, and therefore, it does not expand in the way that it otherwise would have expanded or it does not develop in the way it otherwise would have developed it might hurt the competitive position of General Motors Corporation.

Q. Do you believe with Mr. Shanks who testified here that General Motors cannot go on doing debt financing indefinitely?

A. No company can.

Q. So that if those conditions exist it would undermine one of the assumptions that you have made as to his market impact of 15 per cent. If General Motors was hampered the market impact might be greater than 15 per cent?

A. That is correct.

Q. Have you made any computations of asset loss to Christiana and Delaware such as you made on the assumption that the Government decree would go into effect showing the asset loss on this other assumption you have just made about tax-free distribution and ten years of sales.

You have not, but I am just——

A. I don't recall it.

Q. Referring now to Christiana Exhibits 6, 7 and 8, would the results shown there as to asset loss under the [fol. 1669] column headed "15 per cent" be applicable generally to the second assumption that you have a tax free distribution and ten years of sales by a trustee for Christiana, Delaware, and the stockholders of Delaware?

A. No.

Q. Would it be slightly different?

A. Well, it might be materially different.

Q. Why?

A. In the first place, the dividend tax would not be applicable.

Q. Right.

A. In the second place, the capital gains tax would be computed on quite a different basis.

Q. But it would not result in a very different figure, given this order of figures, would it?

A. It would result in lower capital gains taxes.

Q. Slightly lower?

A. Slightly lower.

Q. You have, have you not, made computations of the

pro-forma income, annual income of Christiana and Delaware on this second assumption of a tax-free distribution and ten years of sales by a trustee, Mr. Emerson?

A. I have.

Mr. Bushby: I should like to mark for identification as Christiana Exhibit 11, a tabulation headed, "Christiana Securities Company Pro-Forma Income Statement, Assuming Completion of the Forced GM Sales and the Reinvestment of the Proceeds Therefrom Under a Tax Free Distribution of Such Shares."

(Thereupon said document was marked Defendant Christiana Exhibit No. 11, for identification.)

Mr. Bushby: I would also like to mark for identification as Christiana Exhibit 12, the similar tabulation for Delaware Realty and Investment Company.

[fol. 1670] (Thereupon said document was marked Defendant Christiana Exhibit No. 12, for identification.)

By Mr. Bushby:

Q. Mr. Emerson, have you before you Christiana Exhibit 11?

A. Yes, sir.

Q. Would you state what that tabulation shows?

A. Well, this is a reconstruction or a projection, rather, of the Christiana income account ten years hence after the completion of the trustee sales.

Q. After a tax-free distribution?

A. After a tax-free distribution, but the trustee would still be making his annual sales.

Q. And what income does it show for that 11th year as contrasted with actual income of Christiana for 1958?

A. The projection shows earnings of $50,616,862 as against the actual earnings—these are in both cases on the common stock—for 1958 of $67,495,671, which is exactly a reduction of 25 per cent.

Q. Now looking at Christiana Exhibit 12 for Delaware Realty, what does that show as to comparative income after a ten-year period?

A. This is a reconstruction of the earnings statement of Delaware Realty ten years hence or at the conclusion of

the trustee sales. It allows for the lower dividend from Christiana that has been shown or computed on Exhibit 11. It shows income on those assumptions of $20,812,800 as against the actual income in 1958 of $27,601,401, a reduction of 24.6 per cent.

Mr. Bushby: I should like to offer in evidence Christiana Exhibits 11 and 12 for identification, if the Court please.

[fol. 1671] Cross-examination.

By Mr. Reycraft:

Q. Once again these are mathematical computations based on your assumptions?

A. Yes.

Q. And they represent your opinion.

A. Yes.

The Court: They are admitted.

(Said exhibits, so offered and received in evidence were marked Defendant Christiana Exhibits 11 and 12.)

Direct Examination.

By Mr. Bushby:

Q. Mr. Emerson, is it practical to market a large registered offering of issued and outstanding stock in the ordinary auction market on the floor of the New York Stock Exchange or any other national exchange?

A. I would think from a practical point of view it would be an impossibility.

Q. Now, what are the factors, the practical factors that make it an impossibility?

A. To market a large block of stock you have to develop orders and then have those orders come to a head at a definite price. In the auction market the price is constantly changing.

It would be extremely difficult, if not impossible, to even make a secondary offering of an actively listed stock while the market is open. They are always made, or substantially always made after the close of the market because then there is no longer a fluctuating auction market that might upset the obtaining of orders.

Q. Well, you have to have a very active solicitation of

orders from a very large group of houses to sell such a secondary, isn't that correct?

A. Yes, sir, definitely.

Q. And such a solicitation does not take place on the [fol. 1672] floor of the New York Stock Exchange isn't that correct?

A. Well, they never take place on the floor of the New York Stock Exchange. They take place with customers of the salesmen of the various underwriting and participating firms.

Q. Now, suppose the proposed Government decree was issued and a trustee appointed and the trustee asked you to advise him how to go about marketing the first two million shares of General Motors he would have for sale; what would your advice to him be, the first step?

A. I would suggest to him that his first step should be to pick an underwriting house in whom he had confidence to head the business, have them organize an underwriting group that would be national in its scope, would cover most of the important dealers in the country, and when the time came to make the sale to negotiate the terms with that underwriting group, and have them handle the sales for him at a time when the New York Stock Exchange was not open.

In other words, the price would be negotiated at a few minutes after the close of the New York Stock Exchange on whatever the given date would be; and then the underwriting group would have the balance of that afternoon and the morning of the next day in which to work at a fixed price before the Exchange reopened.

Q. And you would recommend, would you not, that there be a substantial commission offered to the underwriters and dealers in that offering?

A. Well, it would certainly be necessary to——

You are talking about the sales by the trustee in this particular case, and not a theoretical case?

Q. No—sales by the trustee in this case.

A. It would certainly be necessary to have an underwriting spread that would be several times the New York [fol. 1673] Stock Exchange commission.

Q. Well, a total spread in your estimation of what, per share?

A. You mean a dollars and cents figure?

Q. Yes. A. In our computation here, we use a dollar and a half per share of General Motors sold. I am not sure that that would be the final figure. It might be higher than that; it might be lower. But that is the figure that is close enough for these computations.

Q. Well, when you say that the trustee would get the market price, you say, of 20 to 25 per cent off, in one case, and 15 per cent off in the other, will he not lose, in addition, this dollar and a half spread?

A. Oh, yes; that would be an expense of the sale. That will come out of Christiana and Delaware and the stockholders of Delaware.

Q. Now in such a syndication, would you recommend that you get a best efforts commitment out of the underwriters, or a commitment to purchase, firm?

A. I would definitely recommend a commitment of purchase.

Q. Would you recommend that any stabilization take place during such a secondary offering by the trustee?

A. That wouldn't fall into the purview of the trustee. If any stabilization takes place, it would be done by the underwriting group for their own account; although there is no reason, legally, why the trustee couldn't stabilize himself, if he wanted to.

Q. Can he stabilize himself?

A. Yes.

Q. He has to give notice, does he not?

A. It will all have to be put in the prospectus in that case. Several such cases have taken place.

Q. And whoever stabilized would have to go on the floor [fol. 1674] of the Exchange and announce that his bid was a stabilizing bid, would they not?

A. When they enter the order on the floor of the Exchange, the broker who is handling the buy order is told that it is a stabilizing order, and he must so inform everybody who is selling to him.

Q. There could be no undercover stabilization taking place legally, could there, Mr. Emerson?

A. No. Every underwriting group would try to avoid stabilization if they possibly could.

Q. Why is that?

A. It puts a stigma on an issue. If you stabilize—and I am assuming that this is a registered issue—under the rules of the SEC, every person who buys a security subsequent to the stabilizing transactions has to be so informed by the underwriter who is selling that security to them. That means that every underwriter would have to tell their customers that the General Motors they were selling them was in a stabilized market.

Some people don't like to buy in a stabilized market, because they feel that the price is not necessarily a fair price; and therefore, in every case, underwriters try their best to avoid stabilization. Sometimes they have to do it.

Q. Mr. Emerson, do you consider the experience on rights offerings of unissued stock by corporations to stockholders relevant or helpful to the problem we have here under the Government's proposed decree?

A. No.

Q. Do you think there is a considerable difference between such an offering and a secondary—as I understand it, one difference you testified to this morning, in answer to Mr. Cox, was in the case of a rights offering you are making to a large body of investors already interested in the company——

[fol. 1675] Mr. Reycraft: Are you asking a question Mr. Bushby?

Mr. Bushby: Yes, I am about to ask a question.

By Mr. Bushby:

Q. (Continuing)—at a heavy discount.

Do you remember that testimony, Mr. Emerson?

A. Yes, sir.

Q. And now the mechanics involved in a rights offering—aren't such mechanics helpful to the operation, to the success of the operation—mechanics which do not exist in the case of a secondary?

I am referring to the rights and the purchase of rights?

A. Well, the laying-off process is definitely helpful to an offering under rights; and there is no such arrangement in

the secondary, except I think you could say, in all fairness, that in a secondary you lay off the whole issue.

Q. Now, if somebody purchases rights and then purchases stock under the rights, he can borrow on that stock under those circumstances on a very much better basis, can he not, than if he is handling already issued stock?

A. Yes, sir.

Q. What is his margin requirement in that case?

A. There is a special Federal Reserve rule that anyone borrowing for the purpose of taking up rights, can do so with a margin of 25 per cent.

That would not apply to anyone buying stock under a secondary, and the usual margins there are 90 per cent.

Q. Now, I would like to read to you, Mr. Emerson, one line from a letter of Mr. Hansen to the Internal Revenue Service, March 13, 1958, relating to the Government's proposed decree. It is a line in Paragraph 5:

> [fol. 1676] "Upon the date that each annual dividend declared by du Pont in General Motors stock becomes due and payable, that stock will be transferred upon General Motors' books from du Pont's name to the names of all of its stockholders."

Does that conform to your understanding of the Government's proposal, that Christiana and Delaware and stockholders of Delaware, that their trustee receives the General Motors stock, one-tenth of the whole block they are entitled to annually as a dividend?

A. That would be my understanding.

Q. Now, I would like to read to you a paragraph from the Government's proposed decree. It is the last sentence in Section VII:

> "The trustee may, at his own discretion, accelerate the time schedule for the sale of the shares of General Motors stock allocable to Christiana, Delaware, and the stockholders of Delaware, and the General Motors stock deposited by Christiana and Delaware with the trustee, by selling in any one year such additional shares of General Motors stock as he may determine can be disposed of at a fair price."

Do you, as a layman, Mr. Emerson, see any way that the trustee could sell this year the dividend he will not receive until two, three or four years hence?

A. That provision was over my head; I couldn't grasp it. He certainly couldn't sell short, because he would have to make a delivery.

Q. The provision isn't meaningful to you, is it?

A. It is not.

Q. Now, I would like to read to you another sentence from the proposed decree, two sentences which are just previous to the one I read in Article VII:

> [fol. 1677] "If, in the judgment of the trustee, reasonable conditions do not prevail over an appreciable and adequate portion of this one-year period, the trustee may petition the Court for an order extending this time for such additional part of the 10-year period as the Court may direct. In addition to such other circumstances as may be relevant, reasonable market conditions shall not be deemed to exist if the price which can be realized at the time by the trustee is not sufficiently high to reflect the fair value and true worth of the stock."

Now, is it or is it not your view, Mr. Emerson, that the trustee can comply with that sentence of the decree and still make the sales proposed by the Government?

A. I don't see how, if the trustee literally follows that, he would make any sales during the 10-year period, if my judgment of the market impact is correct.

Q. Therefore, would you term this decree sort of an exercise in futility?

A. That would be a very interesting way of looking at it.

Mr. Bushby: That is all, your Honor.

The Court: Are there any other questions on direct?

Mr. Cowen: I think the record seems to be incomplete on one point.

Mr. Reycraft asked the witness if Exhibits 6 and 7 were only his assumption. I think column 1 of Exhibit 6 and column 1 of Exhibit 7 give some capital gains taxes which would be realized, and I don't think that is the witness's assumption; I think that is a fact.

[fol. 1678] Direct Examination.

By Mr. Cowen:

Q. Is it not, Mr. Emerson?

A. You are talking about Exhibits what?

Q. Exhibits 6 and 7.

A. Yes.

Q. $212,500,000.00 is the capital gains tax—that is not an assumption; that is a fact, is it not?

A. Well, it is a computation, an exact computation, based on certain assumptions.

Q. Well, it is not an assumption, is it; it is a fact that this will be realized if there is a sale under the Government plan?

A. If there are sales under these sets of circumstances.

Q. Yes.

A. That we assume—then this would be the capital gains tax.

Q. Then it is not an assumption; it is a fact in that case. At least, that is the way I construe it.

A. Okay.

Cross-examination.

By Mr. Reycraft:

Q. Mr. Emerson, I believe you have referred on your direct examination to your duties with Morgan Stanley. Will you describe in somewhat more detail—I didn't understand whether you have ever managed of personally been responsible for a secondary distribution, for example?

A. Oh, yes, a number of them.

Q. What would they be, Mr. Emerson.

A. Oh, heavens, I have forgotten them.

Q. Limit it to the past three years, then, if that makes it easier for you.

A. I would have to see a list of the issues we had handled in the last three years.

Q. You don't remember any in the last three years?

A. I know I handled, for instance, the Lykes Brothers [fol. 1679] offering this last year, which is partly a secondary, registered.

There have been a number of them, Mr. Reycraft, but I just don't remember.

Q. That is the only one you can recall?

A. As of the moment, yes.

Q. Mr. Emerson, as you have been testifying, you have a set of notes, I believe?

A. Yes.

Q. Can you tell me whether any of the exhibits you have been referring to in your notes have not been identified?

A. There are no exhibits in here which have not been identified to my knowledge.

Q. Are there any other figures in your notes which are not in an exhibit which has been identified?

A. I don't understand your question.

Q. Well, have you referred to any figures in your notes which are not in an exhibit which is in evidence?

A. A great many of the figures I have referred to are my own computations based on exhibits.

Q. You referred, for example, to some Vickers Brothers figures?

A. Yes.

Q. Is that from an exhibit which is in evidence or are they just——

A. I don't know whether it is in evidence or not here.

Mr. Cox: I told you this morning, Mr. Reycraft, it was not an exhibit. He was reading from his notes.

Mr. Reycraft: That is what I asked him.

By Mr. Reycraft:

Q. So that you have referred to figures which are not in evidence?

Mr. Cox: The figures are now in evidence, Mr. Reycraft, because he has testified to them.

[fol. 1680] Mr. Reycraft: The exhibit is not in evidence.

Mr. Cox: There is no exhibit. All of the exhibits we offered have been received and they are in evidence.

By Mr. Reycraft:

Q. Mr. Emerson, when did you first begin the study of the problem in this case, the proposed divestiture of General Motors stock?

A. We were first approached by the du Pont Company in the summer of 1957.

A number of studies were made, quite a few studies were made, of various aspects of the case at that time. I was not one of the people who was heading that up, although all conclusions were made by meetings and I sat in most of those meetings.

Then in the summer of 1958 we were asked by the du Pont Company to have someone testify in this suit. I was the one selected to testify, and I have been very actively working on it ever since.

Q. Who headed the first study, Mr. Emerson?

A. Two partners, John Wright and Frank Petito.

Q. Did they prepare memoranda concerning this problem?

A. Various memoranda, yes.

Q. Have any of those memoranda been identified?

A. No.

Q. Were you familiar with the conclusions they reached in those earlier memoranda?

A. I can't hear. I am sorry.

Q. Are you familiar with the conclusions they reached in those memoranda?

Mr. Cox: I object to that question. How is that relevant?

Mr. Reycraft: I would like to know if his opinion has changed over the past year.

[fol. 1681] Mr. Cox: You are asking about memoranda by other persons.

Mr. Reycraft: With which he is familiar. He said they were exchanged among members of the firm.

The Court: I don't know how he would know what others know.

Mr. Reycraft: I will ask him.

By Mr. Reycraft:

Q. Do you know what was in those memoranda?

A. I read them, certainly.

Q. They were circulated to you, and did you submit comments on them?

A. Did I make comments on them?

Q. Yes, sir.

A. Yes.

Q. Do you know what the conclusions were in those memoranda?

A. There were half a dozen of them, and some of them related to matters that never came to a head at all, that were not covered by—you see, these were written before the Government proposal, and therefore they were very nebulous.

Q. Did you study then various forms of the divestiture, or did your firm study them?

A. Various forms of divestiture? In a superficial way there were studies made of such possibilities.

Q. What possibilities did you consider?

Mr. Cox: I object, your Honor. I don't think the gentleman is entitled to inquire into work product of a firm of bankers that the du Pont Company employed in a confidential capacity to give them expert advice. It is irrelevant.

The Court: Sustained.

[fol. 1682] By Mr. Reycraft:

Q. Were you, Mr. Emerson, in the course of your studies, given information concerning the amount of du Pont stock held by the stockholders of Delaware?

A. Yes.

Q. Is it contained in any of these exhibits that you testified from?

A. Yes.

Q. Which one, do you recall?

A. Well, it was read into the record at the beginning of my direct testimony this morning. The figure was 472,645 shares of du Pont.

Mr. Cox: 472,645, is that right?

The Witness: 472,645.

By Mr. Reycraft:

Q. Who gave you that figure, Mr. Emerson?

A. An officer of the du Pont Company.

Q. Did you make any independent computations of that fact?

A. No.

Q. Did you make any attempt to verify it?

A. No.

Q. You merely took that assumption?

A. I have never seen a stockholders list of Delaware.

Q. Were any other figures, any other totals considered by you or your firm in preparing your conclusions concerning this problem?

A. Any other figure as to the holdings of the stockholders of Delaware?

Q. Yes, sir.

A. Yes. We had a preliminary figure earlier—well, as a matter of fact, in the du Pont—I have forgotten the legal name for it, it is a document to the Court, proposal, a much higher figure was used.

[fol. 1683] Q. Were you given any reason for the change in that figure?

A. Yes.

Q. What was it?

A. In the first figure used in the du Pont proposal to the Court, as I understand it, they just took the list of the stockholders of Delaware, and compared it with the list of stockholders of du Pont.

Then they found that some of those stockholders were nominees, and even though they might be stockholders of du Pont, the holdings of Delaware might be quite different.

They went behind those figures to find out, at least that is what we were told, they went behind those figures to find out what the actual figure was, and this was the closest approximation that the officers of the respective companies could make.

Q. Did your firm participate in going behind these figures, or was this done by the du Pont Company?

A. It was done by the du Pont Company and Christiana and Delaware—Delaware, I mean.

Q. And that first figure, is that the figure which appears in the du Pont brief or memorandum, as far as you know?

A. This figure of 472,000 is the figure that does not appear in the du Pont proposal to the Court, or the memorandum.

Q. As to the first figure that you used, or on which you based some assumptions, is that the figure which appears in the du Pont memorandum filed with this Court?

A. We never based any assumptions on that figure. We had it corrected.

Q. Did you make any preliminary assumptions or considerations?

A. No.

Q. You didn't submit any memoranda to du Pont based on the earlier assumption?

A. Well, when I was asked to take over this project, we already had a corrected figure. Now whether any—I know [fol. 1684] that memoranda had been written before we got a corrected figure on the stockholdings of Delaware, but I do not recall that any estimates were made, or any memoranda or study, in the sense that you mean, was ever based on those preliminary figures.

Q. You are not sufficiently familiar with them to know whether they were used or not, is that right?

A. I am sorry.

Q. You are not sufficiently familiar with the earlier study to know whether the larger figure was used in preparing any assumptions?

A. I am practically sure it was not.

Q. Mr. Emerson, you have testified from time to time about tax questions relating to the proposed divestiture. Did you rely exclusively on the National Analysts' conclusions in your testimony on these factors?

A. You mean as to the tax impact?

Q. Yes, sir?

A. Yes.

Q. You also testified, Mr. Emerson, that as to the group of stockholders who hold one to one hundred shares, that the tax impact would be very low.

Do you know, or do any exhibits that you have testified from show the number of du Pont stockholders who fall within this group?

A. I think those figures are available in some of the National Analysts figures. I know we got figures from National Analysts on that subject. I don't have them here.

Q. You don't have them in your notes?

A. No.

Q. You don't know what percentage of the total du Pont stockholders fall within that group?

A. I don't think I know, Mr. Reycraft. Let me look. No, the only figures I have here are in shares, not in number of stockholders.

[fol. 1685] I know there were other figures furnished to us by National Analysts, but I don't have them here.

Q. Was the figure you say you have there the number of shares which falls within the one to one hundred group?

A. Yes.

Q. But you don't have the number of stockholders?

A. I do not.

Q. Mr. Emerson, when were National Analysts' estimates first made available to you?

A. Their preliminary estimates were made available to us, I would say, in November of 1958.

Then in December, some more complete figures were given us, and they were final figures.

Q. They were substantially the final figures which you received from National Analysts in December?

A. Yes.

Q. When did you complete your own study, Mr. Emerson?

A. Complete my own study?

Q. Yes, sir.

A. Early in February.

I might say that it isn't completed yet. Nearly every week we have had to change all the figures in it because the market jumped up or down. What I thought was a final study as of the first of February had to be done, redone entirely, after we got out here, because of changes in market.

Q. General Motors keeps going up, doesn't it?

A. No, it went down. We had used 50, Mr. Reycraft, and it is now 46. Du Pont went up.

Q. But over the past year, General Motors has gone up according to the basic papers you have used? You have been down pretty low in some of your assumptions?

A. Yes, I think that is correct.

Q. Mr. Emerson, you estimated, I believe, that approxi-
[fol. 1686] mately 750,000 shares of General Motors stock would be sold each year by individuals because of tax incidence?

A. Yes.

Q. Now, I am not clear as to whether you have any computations on which you base this. Are these again based on the National Analysts figures?

A. What we did, Mr. Reycraft, was take the National

Analysts figures which show the number of stockholders and number of shares for each of these brackets, and the tax applicable to that bracket.

We made a tabulation of that for both individuals and for trustees.

Then we sent that around to several members of our firm, and each man was asked to make his own estimate of how much stock would be sold by the people in that bracket.

Then after those opinions had been expressed, we sat down and discussed the matter, and I arrived at the final conclusion that I have stated.

Q. Do you recall what the range of the estimates was?

A. Well, I do not have those papers here. No, I don't.

Q. Do you have any recollection as to what the range was?

A. They did not vary too much.

Q. By 200,000?

A. I don't know. I would say that they could have varied by 200,000, yes.

Q. Would it be your judgment at least 200,000, more than 200,000, less than 200,000?

A. I think that is probably a fair figure.

Q. 200,000 is pretty close?

A. I am guessing. I don't remember.

Q. You testified also that trustees—stock allocable to [fol. 1687] or distributed to trustees would result in sales of about half a million shares of General Motors per year. How was that figure arrived at?

A. Well, that figure was arrived at by the same method, but the figure that was arrived at was three quarters of a million and not half a million, and then I scaled it down to half a million because I thought that quite a few of the trustees would be selling du Pont rather than General Motors.

Q. Do you recall what the range of estimates was within your firm on that figure?

A. No, and I do not have working papers here. I know that——

Q. Well——

A. I know that the final conclusions are mine. It was not adding them up and averaging them. When different people

had estimated what they thought it might be, then we sat down and discussed it, and a lot of those figures were changed. They were just preliminary figures and in the normal give and take of a thing like that, I do not think that the first figures would be very meaningful anyway; but these final estimates are my estimates and I will be responsible for them.

Q. Well, as to the range or variation of the half million or seven hundred fifty thousand, whichever you wish to take, could I again ask you if, for example, one hundred thousand variation would refresh your recollection at all?

A. It does not refresh it at all. I just do not remember.

Q. But opinions did differ apparently by some significant degree within your firm as to what the amount of selling would be, is that correct?

A. That is correct.

Q. In making your assumptions, Mr. Emerson, and in reaching your conclusions, you assumed, I take it that there would be one sale each year of the stock allocable to Chris- [fol. 1688] tiana, Delaware, and the stockholders of Delaware?

A. Yes.

Q. On a fixed date?

A. Approximately a fixed date of course, the trustee, in making his sales is under a bit of a legal handicap anyway, because he will be registering, and when he registers, when he places this document in registration, he does not know what market conditions are going to be like 20 days later when the registration statement becomes effective, so that he does have the disadvantage that he might have the registration statement come out in a very sloppy market.

Q. Can he then withdraw it?

A. He can delay it. He can keep the registration statement alive and delay the offering.

Q. Can he in fact keep the stock in continual registration?

A. Yes, legally.

Q. Then I would go back to the question I asked you: Did you assume that the annual distribution would take place on a fixed date, or within what period of time around a fixed date did you make your assumption?

A. Well, I assumed that it would come at a regular time.

Whether it would be on the first of January—that really never entered my mind.

Q. You assumed it would be approximately a fixed annual date?

A. I assumed it would be approximately a fixed annual date, yes.

Q. Now, in your judgment, would such a procedure contribute to the difficulty of marketing this stock?

A. Would it add to the difficulty?

Q. Yes.

A. Yes.

Q. Would you be able to express any judgment as to [fol. 1689] the quantity of the difficulty which it would add to the market?

A. I don't know. Now, that would depend upon what happened to the market.

Q. Well, you have reached some conclusions and expressed some percentages based on some uncertainties in the future, and I wonder if in reaching those conclusions you attributed any significance to the fact or to the assumption that a fixed date annually would be set for the distribution?

Mr. Cox: Mr. Reycraft, I do not want to interrupt the examination; could you help me by telling me whether you mean the same date each year, or just a date certain? I am not certain.

Mr. Reycraft: Well, I mean——

By Mr. Reycraft:

Q. (Continuing) I will explain a little more, Mr. Emerson. My question is really directed to the issue, whether, having some uncertainty as to the date, would be of assistance in marketing the stock?

A. I would think it would.

Q. You did not assume, however, that there would be any such uncertainty, did you?

A. No, I did not.

Q. How much assistance do you believe an uncertain date would be in marketing?

A. It would depend very much on how much luck the trustee had in picking his day. If he delayed in the hope of getting a better market and landed up with a worse one, the impact would be worse. I cannot answer your question, because there are too many imponderables in it.

Q. Well, you answered the question to the extent of saying that you thought it would help materially, I believe; am I correct?

A. Materially? No, I did not say "materially." I said I thought it would help.

[fol. 1690] Q. You cannot say how much?

A. No. I would not think it would be material, though.

Q. You would not think so?

A. No.

Q. You would not think it would affect your percentages?

A. Oh, not to a measurable degree, no.

Q. You do not think that it makes it difficult to have the market know that the stock offering for a secondary is coming on a particular day?

A. The market has got to know it, anyway. It has got to be registered.

Q. Well, it does not have to be registered to be sold a particular day, does it?

A. Well, you can pick your day of placing it in registration.

Q. And then how soon do you have to sell it thereafter?

A. 30 days—rather, 21 days.

Q. Within 21 days?

A. Well, the registration statement becomes effective 20 days, I should say, after it is filed.

Now, if on the day when the contracts would normally be signed to go ahead with the transaction, if the market is extremely bad and the trustee decides he does not want to go ahead at that time, he can delay.

Q. How long?

A. He can delay it for—he can just keep the registration statement alive and hope to pick a better day, but if he does it he runs certain risks.

The issue loses a great deal of its impact by delay. All

of these sales efforts have been focused on a certain day of offering. Now, if that proves to be an unfortunate day and the offering is delayed, the tentative orders that all the underwriters have received disappear, or they have to be, shall we say, warmed-up again— it makes it harder to do an issue that is delayed.

[fol. 1691] Q. Well, I understood you testified earlier that it would be easier if there was some discretion as to the date.

A. Yes.

Q. And now you are testifying——

A. I am just saying they are offsetting factors.

Q. Well——

A. What I was trying to say, Mr. Reycraft, is that if the Government proposal is to give the trustee some measure of judgment as to the time he does these offerings within any given year, it should help the trustee to some degree, but if the trustee once picks a date and goes ahead with the idea—registers the issue with the idea of going ahead on a date twenty days in advance and then delays it at that time, he has lost about all of it.

Q. Isn't it a fact, Mr. Emerson, that when the stock is registered the seller is under no obligation to sell it on the 20th day after the registration?

A. That is correct.

Q. And he can, if he wishes, defer building up his book until a later date?

A. Well, now when you speak of a seller, you are speaking of the trustee, aren't you? He is the seller.

Q. Well, all right, let's take the trustee.

A. He does not build up a book.

Q. Well, he has an underwriter do so for him, does he not?

A. The underwriters are the ones that build up the book.

Q. Well, can he not register the stock, wait 20 days and then pick a day—tell the underwriter when to build up the book thereafter?

A. I am not a lawyer, but I question whether that would be legal or not. You do not register a stock, you register an offering. You just cannot register a stock and then have it offered any time you want to.

[fol. 1692] You are describing in the registration statement an offering that is contemplated.

Q. Can you register a purchase under any circumstances?

A. Can you register what?

Q. Are purchases registered under any circumstances?

A. No.

Q. Not under any circumstances?

A. I don't recall.

Q. You do not know of any?

A. I do not know of any.

Q. Are you aware of the fact that a secondary offering of the Ford Motor Company has been registered within the past few days?

A. Yes.

Q. Do you know how much is involved in that registration?

A. Two million shares.

Q. And do you know approximately what the market value of that stock would be at present prices?

A. Somewhere above one hundred million dollars.

Q. And do you know when that stock would be sold?

A. It will be sold in all probability 20 days from the date it was registered. I have forgotten which date it was registered.

Q. Is your firm participating in that offering?

A. I have been away from New York and I do not know.

Q. Has your firm participated in any other Ford financing?

A. No.

Q. You did not participate in the original Ford offering?

A. We did not.

Q. Mr. Emerson, do you have du Pont Exhibit No. 31 with you?

A. Yes, sir.

Q. Do you recall, Mr. Emerson, du Pont Exhibit No. 3? To refresh your recollection, du Pont Exhibit No. 3, I believe, was a—rather, No. 2—a similar chart which [fol. 1693] compares or lists the Exchange prices of General Motors stock between the dates of sometime in December, 1954, until March 17 of 1955.

A. I do not have du Pont No. 3.

Q. You do have No. 31, however?

A. Yes.

Q. Referring to du Pont Exhibit No. 31—well, I will show you du Pont Exhibit No. 2, so your recollection will be refreshed.

The Court: The Court will recess for 10 minutes.

(A recess taken.)

The Court: Proceed.

By Mr. Reycraft:

Q. Mr. Emerson, we were discussing du Pont Exhibit No. 3, which is a price range chart relating to General Motors common stock. You will recall that during your cross examination a similar chart was identified, which began, I believe, with the date, December 30th. The price on December 30th, the closing price was 96⅝. Now du Pont's Exhibit 31, I see, brings the closing price back to December 27th, and the price at 93¾. It also brings back the Dow-Jones industrial average from 401.97 to 393.88.

Referring to that exhibit, you testified, I believe, on direct, that the appropriate period to consider for the market decline in General Motors which you attribute to the rights offering was the high point of 105, I believe, on December 4th, or January 4th, and measuring it thereafter to—I don't recall at what point you concluded. Was that the closing date or expiration date?

A. A couple of weeks after. It was January 3rd.

Q. What did you conclude the percentage of decline was?

A. Eleven per cent.

Q. Now taking the first day of this exhibit, on Decem- [fol. 1694] ber 27th, will you compare it to the same date and state what the decline, if any, was?

A. Well, I don't think it is the right date to take.

Q. Well, let us get back, initially. Why don't you think so, Mr. Emerson?

A. Because there was no impact of the offering on December 27th. Nobody had any knowledge that any offering was going to come at all. The only time it is fair to measure the impact of the offering is from the time just prior to the announcement.

Q. Now du Pont Exhibit 31 indicates that the high on January 3rd was 107⅜ and the low was 101½.

A. Yes.

Q. Do you have any opinion as to the reason for that large a spread in the price of General Motors stock?

A. It was a day that the directors of General Motors were known to be meeting, and there were some rumors around the street as to what they might be doing.

Q. Was one of the rumors that there might be a stock dividend?

A. Yes, the possibility of it.

Q. And you think the stockholders welcomed that and therefore bid up the price of the stock?

A. I think some of them did.

Q. Apparently enough to bid up the price of the stock?

A. The stock went up.

Q. Do you have any judgment as to any factors that might have caused it to go up?

A. I suppose that—this is several years ago now, four years ago, and my memory is not too sure; but they might have considered the possibility of an increase in the dividend, or a stock dividend; they might have considered the possibility of a split, they might have considered any number of different things.

Q. They might have, but you do know that there was a [fol. 1695] rumor that there was a stock dividend or there might be a stock dividend?

A. That is hearsay. I was told that.

Q. Well, you are a financial expert, and hearsay frequently enters into your judgment, does it not?

A. I think that the statement is true.

Q. Which one?

A. That such a rumor existed.

Q. Mr. Emerson, referring again to the question I asked you a little while ago, taking the period beginning December 27th and ending on March 7th, which is the date that the General Motors rights expired, will you state what the market percentage of change of price of General Motors stock was?

A. From December 27th to March 7th?

Q. Yes, sir, if that is the date you took before, the terminal date.

A. On December 27th, General Motors closed at 99¾; on March 7th it closed at 96⅞.

Q. Approximately what was the change, the net change, in the closing price during that period?

A. 3⅛ points.

Q. And that would be about 3 per cent, would it not?

A. That would be roughly 3 per cent.

Q. 3 per cent up?

A. Up.

Q. Rather than, as you testified earlier, taking a different starting point, that the decline, beginning about a week later, was down 11 per cent, is that correct?

A. Well, I used a period beyond the expiration of the rights, because there were still some final lay-offs to take place. The stock had not been distributed at that time. I did not think that was the right day.

As I remember it, I took a week later, which would have been—I would have to refer back to my notes. I don't know what date I took.

[fol. 1696] I think it was about the 15th.

Q. What was the low point? Was it 93¾?

A. No, it was not.

Q. You think it was the 15th, and do you recall why the 15th?

A. Do you want me to look it up in my notes?

Q. Yes, sir, if you will, please.

A. March 17th, ten days after the expiration of the rights, General Motors closed at 93¾ is what my notes say.

Q. And you took the period ten days after the expiration of the rights. Was that an arbitrary day?

A. It was an arbitrary day, yes; and it is certainly not the low here.

Q. Which, in your opinion, represented the date on which the rights, any effective rights, would have been dissipated?

A. It should have been by then, yes. At least, I won't say that the impact was gone then, but the stock——

Q. It was pretty minimal by then, very slight?

A. No, I don't think that would be true, Mr. Reycraft; but the stock that had been taken down by dealers and underwriters should have been sold by then. That is why I took it.

Q. Now taking that date and the beginning date on du Pont Exhibit No. 31, what is the comparison?

A. No change.

Q. In other words, on the terminal date which you selected for your earlier estimate, the closing price of Gen-

eral Motors stock was exactly the same as it was on December 27, 1954, about a week after the public notice of the rights offering?

A. Yes, except I still think that December 27 is not the right date to use.

Q. You don't like that period?

A. It is not a fair period to take in my opinion.

Q. Well, you think that the January 3rd date, when there [fol. 1697] was a rumor affecting the market price, you think that was a fairer price to take?

A. Yes, I think it is the only fair date to take, but I do think you have got to make allowance for the fact that the stock was high at that time.

Q. Did you make any allowance for that fact in your earlier testimony?

A. My figure of 11 per cent was mathematical.

Q. Taking a week earlier, however, there was no change at all?

A. Well, there is still an impact because the Dow-Jones Industrial average went up and General Motors didn't.

Q. How much did the Dow-Jones industrial average go up?

A. It went from 394, approximately, to 405. That would be about two and a half per cent.

Q. You testified earlier, I believe it was during your testimony in the Government's case, that the rights offering might ordinarily be anticipated to effect some dilution of earnings?

A. Temporarily.

Q. Do you think that that dilution was——

A. (Continuing) It might. It depends on the purpose of the financing. But there might be an immediate and temporary effect of that sort.

Q. That factor was present after the rights offering in this case, was it not?

A. Yes. This was to reimburse, as I remember it, to reimburse the treasury of General Motors for very substantial expenditures they had made for expansion.

Q. There was a dilution which was in effect, rather which was showing its effect on that day, I believe you testified?

A. Even on that basis it would have been very small because that was an offering in the ratio of one for 20.

[fol. 1698] Q. Referring now, Mr. Emerson, to du Pont Exhibits No. 27, 28, and 29, which is a chart showing the range of RCA common prices during the period beginning October 10, 1932 to May 1, 1933, were you at that time connected in any way with the securities market or profession?

A. Yes.

Q. Where were you at that time?

A. I was manager of the Philadelphia office of the Guaranty Company of New York.

Q. And what was their business?

A. Securities underwriters. They were an affiliate of the Guaranty Trust Company.

Q. I see. Do you recall whether any other events were occurring during this period which might have affected the price of stock on the Stock Exchange?

A. It was a very unusual period, but the prices were not affected.

Q. The prices were not affected?

A. The Dow-Jones average was very steady through this period.

Q. Did you in your preparation for this case and in preparation of this exhibit give any consideration to the movement of the industry stock index rather than the general Dow-Jones stock index?

A. No, I don't know that there was one at that time.

Q. You don't know that there was such an index?

A. I don't think there was.

Q. Did you compare the price movements of any comparable companies?

A. No.

Q. So you don't know whether this movement was unique with RCA or whether it was common to other electronic companies or radio companies at the time?

[fol. 1699] A. I think it was very definitely unique with RCA. This is a classic example of what happens when you increase supply.

Here six million shares of RCA common were distributed to stockholders of other companies that had no particular interest in RCA, and they turned around and sold it. Even though the entire amount of the distribution was only $25 million, nevertheless the chart that you refer to shows how much the activity in RCA jumped, the activity as a propor-

tion of the total activity on the Exchange, in other words, the relative activity, jumped at the time of the consent decree and jumped again at the time of the actual distribution.

RCA as a percentage, deflated by the Dow-Jones industrial average, I would say plummeted from November, 1932 to the week of the distribution in February, 1933. It went down to under 55 per cent.

Q. Now, who selected this time period, Mr. Emerson, for this exhibit?

A. Who selected the time?

Q. Yes, sir, the time period.

A. I did.

Q. Did you carry out the price projection at all past the end date before you determined on this particular time period?

A. We did not. It was very difficult to get these figures, and we were getting them in a hurry. You see, this all happened before our firm was established, and we had to go outside to get the figures.

The first draft of the chart, we just took through the bank holiday. I think we ran it to March 27th. Then I asked the man that was working on it to run the figures along a little further to see what had happened.

I gave him the date of May 1st to stop the chart, although he had figures running way beyond that. It seemed to me that beyond that they were meaningless.

[fol. 1700] Q. Would you be able to make the additional figures available to us, Mr. Emerson? I think they might be interesting.

A. They are in New York. At least, I assume they have not been thrown away.

Q. If they have not, would you be willing to give them to us?

A. Surely. Maybe they are here.

Q. We can discuss that later.

A. All right.

Q. On du Pont Exhibit No. 30, Mr. Emerson, there are a number of offerings of industrial common stocks to stockholders of $50 million and over.

You begin with the Texas Corporation, and the date of the prospectus of that issue was February 5th, of 1937;

The subscription price, $40.00, and closing market price 58⅛.

Do you know what has happened to Texas Corporation stock in the meantime, whether there have been any splits or what the relationship of the adjusted market price would be to this price?

A. I would be surprised if there had not been splits, but I don't know.

Q. You don't have that information?

A. No.

Q. Now, I am not sure whether you testified whether your firm had managed any of these offerings or not. Do you recall so testifying?

A. We did.

Q. Which of them did you manage?

A. We managed American Tobacco B, American Tobacco Company, Socony-Vacuum Oil Company, General Motors, Socony-Mobil, International Business Machines, Standard Oil of New Jersey, Royal Dutch Petroleum, and as I remember it, we advised and helped to draw the registration statement in the two issues of Imperial Oil, although they were not underwritten.

[fol. 1701] Q. Mr. Emerson, when your firm is approached by a corporation which wishes to issue rights, do you assume uniformly in every case that there will be a decline in the market price as a result of the rights offerings?

A. Yes.

Q. Do you, prior to determining to go ahead with it, make a computation or estimate as to what the decline will be?

A. No. There is no exact yardstick, but we invariably warn the client that there will be an impact.

Q. Isn't it true that as to those stockholders who do not exercise their rights or sell their rights, they lose a certain amount financially as a result of these offerings?

A. Yes. If the amount is small, it is our policy in all of our underwriting contracts, if less than 3 per cent of the stock is unsubscribed, we sell that and turn over the profit above the subscription price to the company where it goes to the benefit of all the stockholders.

Q. But the individual stockholders to whom that is attributable do not ever get that money?

A. That is correct.

Q. So that on each underwriting you do make the assumption that some stockholders will lose out due to their own negligence?

A. Some very small proportion, yes.

Q. Perhaps 3 per cent or more?

A. It is usually under 3 per cent; 1 or 2 per cent.

Q. Now in connection with the Ford issue, I believe you testified that there was a good deal of uninformed buying. Would you explain your testimony in that respect?

A. Yes. I will give you an example.

I live in Short Hills, New Jersey. I received one night a telephone call from a woman up in New Hampshire who had been the nurse of my late father, and she had heard the [fol. 1702] Ford issue was coming along. She felt that she had to buy some of the stock in order to share the profits of the Ford family.

I asked her if she had ever bought any stock before, and she said she never had. I asked her why she didn't buy General Motors, and she said that she had no reason to; that she just wanted to buy Ford. Well, that is what I call uninformed buying.

Q. Why did you suggest to her that she buy General Motors rather than Ford, Mr. Emerson?

A. Because I knew more about it. I was trying to find out from her if she had any particular reason for buying Ford.

Q. If she had better information than you?

A. I don't know whether she bought it or not. She wanted me to buy it for her. I told her we were not in the business, and if she really wanted to buy it, she should go to her bank.

Q. Isn't it true, Mr. Emerson, or do you know of any exceptions to any financing which has been done by General Motors in the past 30 years which has not been done through your firm?

A. Yes, there are exceptions.

Q. What have they been?

A. I don't know the year, but the General Motors Corporation sold a bond issue not through our firm. This was, I think, back in the 1930's or '40s.

Q. Do you know who managed that issue?

A. It was sold privately. I don't know whether there was any other investment banker. I think probably that the officers of the General Motors Corporation handled it themselves.

General Motors Acceptance Corporation has also sold a great many issues privately other than through our firm. [fol. 1703] In fact, they have sold issues privately through other investment bankers.

Q. How many times has General Motors engaged in equity financing over the past 30 years?

A. Once.

Q. And over the past 40 do you know of any other occasions on which General Motors has engaged in equity financing other than the rights offering in 1955?

A. I know of no other, not since our firm has been established, and, I don't remember any other back earlier.

Q. So that General Motors capital has been developed largely from retained earnings, is that a fact?

A. They have sold two sizeable preferred stock issues and one bond issue of $300 million, so that they have had to do a fair amount of outside financing other than retained earnings and other than the single rights offering in 1955.

Q. But there has been only one financing through an offering of common stock, isn't that correct?

A. That is correct.

Q. I believe, Mr. Emerson, that you testified earlier that there was a statement in the Ford Prospectus when the original offering was made in 1956 to the effect that the Ford Foundation still had somewhat over 36 million shares which they might sell from time to time.

A. Yes.

Q. I believe you also testified that in your judgment this statement had an effect on the subsequent market price of Ford?

A. It seems to me that it did, yes.

Q. You puzzled me somewhat with your earlier testimony that you thought many of the people who bought Ford stock didn't know how to read the prospectus. Do you have any——

A. Well, I think my father's nurse would be an example.

[fol. 1704] Q. But you think that the statement in the prospectus had an effect on the market despite the fact——

A. Oh, yes, definitely. There are sophisticated buyers who would, in the last analysis, buy, I guess, the bulk of the Ford offering who certainly do know how to read a prospectus.

Q. And do you know to what extent Ford's earnings declined during the period of one year following this offering?

A. I do not know. I do not have those figures here.

Q. You do not have a general idea?

A. No.

Q. You have formed an opinion, however, that the price decline was attributable to the size of the offering?

A. To the size, to the fact that a great many of the buyers bought on a speculative basis rather than an investment basis, and to the fact that the Ford Foundation still had this 36 million shares that people expected that some of it would come onto the market as the market would take it.

Q. People considered it to be overhanging the market? Would that be correct?

A. To some degree. It certainly would not be overhanging the market to the same degree that the sales would be under the proposed Government decree here, because the Ford Foundation does not have to sell if it does not want to.

Q. Because the dates are fixed under the decree?

Mr. Cox: What dates?

By the Witness:

A. No because a program——

Mr. Cox: What dates, please? Do you mean the 10-year period?

Mr. Reycraft: I am asking him what his assumptions are.

[fol. 1705] Mr. Cox: Let's have the question read.

(Question read by the reporter.)

Mr. Cox: I object to the form of the question unless Mr. Reycraft specifies what dates he means—the date of the

sale, the date of the plan, the date within which the plan was to be carried out. The witness is entitled to know.

The Court: Can you be more specific?

By Mr. Reycraft:

Q. Well, I thought it would be clear to you, Mr. Emerson, I was referring to the dates of the sale.

A. I could not hear you.

Q. I thought it would be clear to you that I am referring to the dates of the sale.

A. Well, may I hear the beginning of the question?

Mr. Reycraft: Will the reporter read it, please?

(Record read by the reporter.)

By the Witness:

A. No, because it is a general program.

By Mr. Reycraft:

Q. Are you familiar with the prospectus which was filed by the Ford Foundation in connection with its latest secondary?

A. I have not seen it, no.

Q. Do you know it to be a fact that that prospectus also states that there may be additional sales by the Foundation?

A. I do not know.

Q. Mr. Emerson, referring now to du Pont Exhibit No. 32, you have testified concerning the decline in price of about eight issues, including the Upjohn issue. Do you [fol. 1706] recall the date of the Upjohn issue?

A. December 10, 1958. It is given on the tabulation.

Q. And have you explained what the factors were in your judgment which account for this decline?

A. It is a very thin market in the sense that the floating supply was small. The supply was about to be increased materially, in fact, by 2,410,000 shares, and it was just another case of the working out of the law of supply and demand. With the supply going up by that amount, the price went down.

Q. And did you know before that offering that the price would go down?

A. Yes, I felt sure that it would.

Q. Well, how was this issue priced?

A. Well, it was priced in much the same way any other secondary would be priced.

We made very complete comparative studies of the Upjohn Company and about ten pharmaceutical companies showing figures like sales, per cent of sales carried through into net, amounts spent on research, price times earnings, yield, growth factors; in other words, growth of sales over a period, and the growth of earnings.

I do not remember what all the factors were that were on those sheets, but we came to the conclusion that the price at which Upjohn was then selling could not be—we could not sell 2,410,000 shares at anywhere near that price.

Q. What was that price, Mr. Emerson?

A. The offering price was forty-five.

Q. What was the price at which Upjohn was selling? Was that the price at which it was selling on the market?

A. Well, it was going down on the market all the time.

Q. Well, now, you testified earlier there was a thin mar-
[fol. 1707] ket for Upjohn stock, is that correct?

A. I think I can give you some prices by dates, if you want them.

Q. Yes. Would you?

A. The announcement of the offering was on October 28, 1958. Upjohn, at that time, adjusted for the subsequent 25 for 1 exchange, was 68 bid and 72 asked.

The registration statement was filed apparently November 21. That was the first time really complete information was available to the market.

One week after the filing of the registration statement the market was 59¼ bid, 60 asked. The offering was to take place on December 10; two days before the offering, the market was 55¼ bid, 56¼ asked. The date of the offering, two days later, and the offering took place at 45, the market was 49¼ bid, 50 asked.

Q. Was that on the date of the offering, Mr. Emerson?

A. That was on the date of the offering. On the date of delivery, which was a week later, it was 48 bid, 48½ asked. These are all over-the-counter.

The stock was listed on the Exchange on January 5th. The closing price that day was 47.

There was a secondary offering of 83,250 shares that day, and it went down rather promptly after that.

Two weeks after listing it was at 45 and it is, as I remember it now, around 41.

Q. And you concluded your study here two weeks after the offering, and you say it is now what, 41?

A. Yes.

Q. So that——

A. The last time I saw it, it was.

Q. So that about four months later there is about a 4 point change in Upjohn?

A. Yes, sir, in spite of the fact that the Dow-Jones Industrial Average has been going up almost continuously throughout that period.

[fol. 1708] Q. Now, Mr. Emerson, referring to du Pont, Exhibit No. 33, did you testify as to the events which occurred during the period of time which you selected for this exhibit?

A. No.

Q. You don't know what the causes were of these declines, what the factors were which may have caused these declines?

A. There is only one of them that I know of, and that was the burning of the Livonia Plant of General Motors, which meant that they had great difficulty in making automatic transmissions. That caused one of these declines, but I don't even remember which one it was. The other factors that entered into the others, I don't know.

Q. That would be 1953, I suppose.

A. I don't know.

Q. Now with respect to the du Pont price changes set forth in the next exhibit, are you familiar with any events which may have caused these declines?

A. I don't think they are offered in evidence.

Q. Pardon me.

Mr. Cox: May I inquire what price decline? Mr. Reycraft, we didn't offer that; he didn't testify about it. I am sorry.

By Mr. Reycraft:

Q. I will ask you about it. You have the exhibit, do you not, Mr. Emerson?

A. No, I do not.

Q. It is not identified.

A. I don't think I have it. I will look through my notes and see.

No, I do not have it.

Q. All right.

Mr. Emerson, are you aware of any desire on the part [fol. 1709] of institutional purchasers to obtain stock in substantial blocks rather than over the exchange?

A. At times.

Q. Will you explain your answer?

A. If an institution is aggressively buying stock and a secondary offering comes along in that particular stock at just the time they happen to be buying, it is sort of heaven-sent opportunity to them, because they can buy then at a price that they know rather than having to speculate on the future of the market. Even then there are quite a number of institutions that will not do that, who believe and who rigidly adhere to the dollar averaging theory; and therefore who won't buy on the secondaries, even though it is a stock they want.

Q. Has it been your experience that purchases of this type account for a substantial proportion of secondaries?

A. Of which type?

Q. By institutional investors desiring to buy large blocks of stock?

A. It varies. It depends on the type of stock. I don't remember the figures.

You placed in evidence the distribution of General Motors stock in the Sloan secondary. I don't remember how much of that was taken by institutions. But in most secondaries individuals were the predominant buyers.

Q. Now, you testified, I believe, Mr. Emerson, that with respect to the divestiture of stock of the Aluminium Company, you testified concerning the market effects of that divestiture. And what was your judgment as to the market consequences?

A. I don't think I gave these in the direct testimony, but I have some figures here that show how Aluminium moved as compared with some of its competitors.

Q. I believe you testified that it was depressed during the period by the offering.

A. Yes, sir, definitely.

[fol. 1710] Mr. Cox: I think the precise testimony of the witness was that, in his opinion, the offering had an impact on the price; and that is all he said.

By Mr. Reycraft:

Q. Do you have any judgment, Mr. Emerson, as to the amount of the impact on the price?

A. Well, from the median price in 1950, to the median price in 1959, from January to March 10th, the Dow-Jones Industrial Average went up 174 per cent; Aluminium went up 145 per cent; Alcoa went up 453 per cent; Reynolds Metals went up 1425 per cent; Kaiser went up 587 per cent.

Q. Is that your answer to the question?

A. Well, it certainly shows that Aluminium has not shared in the very strong market of the aluminum manufacturing companies and is the only one of the aluminum manufacturing companies where there was steady pressure on the market through distribution of these blocks of stock.

Q. In your opinion, was that attributable to the divestiture?

A. I think some part of it was, Mr. Reycraft: I certainly don't think that it all was.

Q. And you don't have any judgment as to how much of it would be?

A. No, I haven't studied it that much.

Q. You also testified, I believe, Mr. Emerson, that comparing the Aluminium divestiture with the present problem, that there would be approximately nine times as much stock sold under the Government's proposal.

A. There was 165 million dollars worth of Aluminium sold over a 10-year period. That would be sixteen and a half million a year.

The Government proposal here of two million shares a [fol. 1711] year by the trustee would mean approximately ninety million dollars, so that just the sales by the trustee would be five or six times as much as the average sales of Aluminium; and then, in addition, of course, is the sub-

stantial amount of sales that will be taking place by du Pont stockholders. I had forgotten that ten times figure——

Q. I am referring to earlier testimony. I believe you may have misspoken. You said nine times, comparing the secondary, comparing the two million shares a year to the Aluminium. I think it would be closer to five times.

A. Five or six times, insofar as the sales by the trustee is concerned.

Q. This is comparing market prices beginning in 1950 through 1959, comparing those prices to present General Motors prices, is that correct?

A. The Aluminium figures are historical, and they therefore reflect the lower prices of Aluminium that prevailed toward the beginning of that period.

Does that answer your question?

Q. Yes, sir. The five times figure compares present General Motors prices to prices which include very much lower Aluminium prices at an earlier date?

A. That is correct.

Q. I would just like to call your attention to Government's Exhibit 438, which indicates that as of December 31, 1958, the stock disposed of under the Aluminium Judgment would have a current market value of $276,000,000, which is more than one-fourth of the amount which it had proposed to be sold under the Government's proposed final judgment.

I want to also call attention——

A. May I have those figures again, please?

Q. Yes, sir—$276,000,000, based on the current market [fol. 1712] price as of December 31, 1958. The stock disposed of under the judgment amounted to 8,379,810 shares, adjusted shares.

A. And it would be 27——

Q. $276,533,000?

A. Over a 10-year period. So that would be, say, 27 million a year.

Q. Yes, sir, that is right.

A. Well, the sales by the trustee would still be three or four times as large.

Mr. Cox: Are you suggesting, Mr. Reycraft, that you are going to amend your plan to provide for a 40 year period?

Mr. Reycraft: No, I am suggesting a fair basis for com-

parison is not a nine times figure but perhaps a three times figure.

Mr. Cox: 30 years?

By Mr. Reycraft:

Q. I would also like to call your attention, Mr. Emerson, to the fact that during this period Aluminium issued 7,950,989 shares.

A. Are those adjusted or actual?

Q. Those are adjusted, Mr. Emerson, which would have a current market value of 262 million and some odd.

Have you made any sort of study of the Aluminium situation other than what you have just testified to?

A. I made a study of the market action of a number of their secondaries, the larger ones, to see if there was a noticeable impact on the market, and there was.

How long that lasted, I didn't make a complete enough study to qualify as an expert on it.

Q. You don't consider yourself an expert on the Alumin-
[fol. 1713] ium judgment then?

A. No, just in a general way.

Q. Mr. Emerson, referring again to du Pont Exhibit No. 30, I hand you Government's Exhibit No. 470, which is a chart which shows the price movement of American Tobacco Company stock after the date of the prospectus and some time prior to that, which issue occurred in March of 1952.

Will you describe what the price of that stock was during that period?

A. Well, may I hear the question?

Q. Pardon me?

A. I am trying to find out what the question is.

Q. The question is, will you describe the movement of the price of that stock subsequent to the distribution?

A. I don't know when the subscription date was.

I would have to find my exhibit.

Q. Your exhibit shows that the date of the prospectus was March 5, 1952, and you don't give the subscription date, I don't believe.

A. March 5th. Well, I assume that it ran about two or three weeks—probably three weeks—so that the latter part of March would have been the expiration of the rights.

At that time, apparently—now let's see—the low in March was 57; the stock went down for the next two months, hopped up in June, went down in July, August and September, and then the balance of that year it took a steady rise.

Q. May I look at that exhibit?

A. Yes.

Q. Doesn't that exhibit indicate that there is no noticeable decline in the price of this stock after the date of the offering?

A. No. To me it indicates just the contrary.

[fols. 1714-1715] Q. For how long a period?

A. For about three months.

Q. Do you have any judgment as to whether that was the date on which such impact as there was would have been overcome or dissipated?

A. It would be very difficult to trace it for any lengthy period beyond that, because of factors taking place in the tobacco business and the general market.

Q. Do you think three months would be a maximum period?

A. I would think that three months would be a maximum period that you could trace it. I won't say that it won't be beyond that. I am not sure you could even trace it for three months, but these figures seem to indicate that it had that effect.

The Court: The Court will adjourn at this time.

(Whereupon an adjournment was taken in the above-entitled cause until Thursday, March 19, 1959, at ten o'clock, a.m.)

[fol. 1716]

Transcript of Proceedings of March 19, 1959

The Court: You may proceed.

SUMNER B. EMERSON, a witness called on behalf of the defendant, E. I. du Pont de Nemours & Company, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination:—(continued).

By Mr. Reycraft:

Q. Mr. Emerson, I will refer to a document which bears the heading, "Decline of Market Price of du Pont Common Stock During Selected Periods 1946-1957."

This is the document we referred to yesterday which was not marked for identification by the du Pont Company.

I will hand you this document and ask you whether this is a document which was prepared under your supervision?

A. Yes, sir.

Mr. Reycraft: Will the reporter please mark this document as Government's Exhibit 536 for identification.

(Therefore said document was marked Government Exhibit 536 for identification.)

By Mr. Reycraft:

Q. Mr. Emerson, referring to Government's Exhibit 536 for identification, will you state what each of the four periods of time set forth on that exhibit signify with respect to the price movement of du Pont stock?

A. These show declines in market value in periods ranging from two and one-half months up to four and one-half or five and one-half months, nearly six months, the declines being 29 and one-tenth per cent, 18.4 per cent, 20.7 per cent, and 22 per cent.

[fol. 1717] Q. And will you state also what the declines of the Dow-Jones average were with respect to each of those periods?

A. 22, 6, 9.3, and 18.2.

Q. Who selected the periods for that study, Mr. Emerson?

A. I asked to have a list made, and I don't know what

man in our office did it. It was whatever periods the market justified.

Q. What instructions——

A. The market really selected it.

Q. What instructions did you give him with respect to the selection?

A. To pick out major declines in du Pont stock.

Q. And these are the major declines, so far as you know?

A. In this period.

Q. Are you aware of the events, or whether there were any events which explain these declines?

A. I am not. We didn't put it in evidence, and I didn't look it up.

Q. So far as you are concerned, they merely indicate the major declines in the price of du Pont stock. Over what period of time?

A. The longest period was just under six months.

Mr. Reycraft: I offer Government's Exhibit 536.

The Court: Any objection?

Mr. Cox: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked Government Exhibit 536).

By Mr. Reycraft:

Q. Mr. Emerson, I will refer next to Government's Exhibit 445, which gives the adjusted, the price range of ad- [fol. 1718] justed shares of Aluminium stock over the period of the stock divestiture in that case.

Referring to that exhibit, and relying on your experience as a financial expert, will you state what conclusions you draw with respect to the taxes which the sellers of that stock would have had to pay over that period?

Mr. Cox: May we have that question read, please?

(Question read.)

By the Witness:

A. I would draw no conclusions.

Q. Assume further, Mr. Emerson, that all of the stockholders involved in the divestiture of the Aluminium case held their stock at a price below that on the first date?

Do you draw any conclusions with respect to the capital gains tax they would have paid on those sales?

A. If their costs are below those shown on the first date of $8 a share, and they sold it at a higher price, they would have a capital gains tax, but I have no means of computing it or knowing what their tax picture was.

Q. You are sufficiently familiar with the tax laws to know that they would have had to pay a substantial capital gains tax?

A. Yes, sir, except that some of them were tax-free institutions, and no tax was involved.

Q. To the extent that they were tax free, they had no tax?

A. Yes. I think several of them were foundations, charitable foundations.

Q. Mr. Emerson, referring to your testimony on the Upjohn issue yesterday, do you recall what the price earnings ratio of Upjohn was at the time of the secondary distribution?

A. Roughly, thirty.

[fol. 1719] Q. And do you know what it is now?

A. I would guess twenty-nine or twenty-eight.

Q. And how does this compare with the price earnings ratios of companies engaged in similar activities?

A. It is approximately the same. They varied. As I remember, our comparison, they would have been in the area of the twenties up to thirty.

Q. Between 20 and 30?

A. Some of them; some of them were right around 30.

Q. That would be what—a 50 per cent variation in the market price?

A. I don't understand your question.

Q. A range of 20 to 30 in price earnings ratio would indicate a price variation of approximately 50 per cent; therefore, a stock with a 20-to-1 price earnings ratio would be selling substantially lower than that with a higher price earnings ratio?

A. You misunderstood my answer. I said they were right around the same, although there were some that were lower, and those that were lower were in the twenties somewhere. I didn't say "twenty."

Q. Mr. Emerson, you also referred in one of the exhibits which you prepared, Exhibit 32, I believe it was, to the two-week period beyond the offering date which you took as a test of the impact on the market of those offerings. In

your judgment, that is a fair period to take to measure the impact?

A. I think it is a fair period to take in the sense that by the end of two weeks following the offering, all underwriters and dealers who want to sell their stock should presumably be out of it by then.

Q. So you think it is a fair period?

A. Yes.

Q. Referring to secondary distributions, in general, Mr. Emerson, when a seller comes to your firm to ask you [fol. 1720] to handle a secondary, what considerations do you give to the interests of the other stockholders of the company, those not involved in the sale?

A. I wouldn't say that they would be given any consideration.

Q. Is it a fact, Mr. Emerson, that you generally try to pick or the seller generally tries to pick a strong market for a secondary distribution?

A. Some of them do, and some of them do not. I don't think there is a general rule.

Q. You also referred yesterday, Mr. Emerson, to the One William Street Fund. Are you familiar with the by-law of that company which prevents that fund from investing in any company with which the directors of the fund are affiliated?

A. I know that is more or less standard practice, but I was particularly calling attention to the fact that they had not bought any General Motors and there are no directors of that fund affiliated with the General Motors Company that I know of.

Q. You testified that there were five directors affiliated with the Ford Motor Company.

A. That is correct.

Q. And that is probably the reason that they don't buy Ford. Do you think that is also probably the reason they don't buy General Motors?

A. I don't see why that should be a factor. I think they didn't buy General Motors because they didn't like it.

They are trying to do the best job they can for their stockholders, and they therefore, in their judgment, thought that it was not an attractive stock and they didn't buy.

Q. Do you know what General Motors was selling for at the time this fund was formed?

A. No. That would have been in May of this year, and I don't remember.

May of last year—I am sorry.

[fol. 1721] Q. Are you familiar, in a general way, with the experience which that fund had in selling its shares?

A. I know that they had a very successful sale.

Q. Do you know approximately how much stock was involved?

A. About 185 million dollars.

Q. Did you know how long it took to sell that stock?

A. I don't know how long the period of registration was. It took that length, whatever it was. Assuming it was the normal period, that would have been 21 days.

Q. Mr. Emerson, you have testified with respect to the Government's proposed judgment that if the trustee were to defer a sale in a particular year, it would bring it into the subsequent year and create additional difficulties in making the sale.

Is that the substance of your testimony?

A. That is correct.

Q. Would this still be your opinion if the Court permitted the trustee to extend it beyond the ten-year period, to the extent that he was authorized to defer these sales?

A. Well, during the period that a sale has been postponed, it is hanging over the market. No market acts well when it is known that a big block is overhanging it.

I don't know whether that is responsive to your question or not. I really don't understand your question.

Q. Do you think it would assist the trustee at all in making the sales if the Court permitted him to go beyond the ten-year period to the extent that he was authorized to defer sales?

A. Under certain circumstances, it might.

Q. You don't think it would materially assist him?

A. I don't think it would materially help.

Q. Yes, sir.

A. I wouldn't think so.

Q. You estimated, Mr. Emerson, that a 20 to 25 per cent [fol. 1722] decline would occur in the price of General Motors stock on certain assumptions.

Will you go through these assumptions again for me? Tell me what you base this 20 to 25 per cent figure on.

A. No, I did not say that, Mr. Reycraft. I said that in my opinion General Motors would sell at 20 to 25 per cent under what it would otherwise have sold, and the assumptions were that the Court granted the Government's proposal.

Q. I believe you testified that you assumed there would be secondaries each year?

A. Yes.

Q. Did you assume——

A. (Continuing) Unless the market conditions were such that the machinery that is in the proposal were invoked.

Q. You assume that there would be a single secondary each year?

A. Unless market conditions prevented it, and I think it would be almost inevitable over a period of ten years that some sales would have to be delayed.

Q. You also testified, I believe, that the distribution of the stock would contribute to this price differential that you estimate, this 20 to 25 per cent?

A. I don't understand that question.

Q. Well, you understand the distribution of the stock to the stockholders?

A. Oh, yes. It would. It would be a factor in it.

Q. And you also testified, I believe, that the third factor was the overhang of possible future sales?

A. Yes.

Q. Are you able to break down your estimate to say which of these factors contributed how much to your estimate?

A. It would vary from year to year, so that I would hate to be categorical, but in my opinion, in my own mind, I would think that the selling by the trustee and the selling [fol. 1723] by du Pont stockholders would have approximately the same impact on the market; possibly the sales by the trustee slightly more.

Q. Slightly more?

A. Slightly more than the other, but roughly 50-50.

Q. I understood there were three factors. Fifty-fifty between what?

A. Between the sale by du Pont stockholders and sale by the trustee.

Q. And those would be the factors which make up your total percentage?

A. Yes.

Q. Now, can you tell me with respect to the amount you attribute to the secondary, which I suppose is between 10 and 12½ per cent based on your estimate, how you arrived at that figure?

A. By a study of what other secondary offerings have done to the market.

Q. Did you base it solely on what other secondaries have done to the market?

A. And my judgment as to what this one will do, yes. It is based on my experience with secondary offerings.

Q. Did you rely on the secondaries which are set forth in the exhibit which relates to the impact of secondaries?

A. Yes.

Q. And what did you rely on in addition?

A. That was part of my thinking.

Q. What did you rely on in addition, sir?

A. My general experience.

Q. In making your estimate or in forming your conclusion with respect to previous secondaries, how did you weigh them in coming to this 10 to 12½ per cent conclusion?

A. The secondaries that would take place under the [fol. 1724] Government's proposal would be an entirely different type of secondary than any of those that have been shown in any of the exhibits because of the fact that they come regularly with heavy pressure every year.

Q. Would one of them be similar to the Ford secondary which is now on registration?

A. The Ford secondary now on registration would—let's see, that is a hundred odd million, a little over a hundred million.

Q. What would the annual sales by the trustee be in dollar amount?

A. That would be upwards of a hundred million.

Q. Upwards? How do you calculate that?

A. Well, if you take two million shares, if the market is 46, based on today's market, it would be about 92 million. If the market goes off, as we have estimated that it would——

Q. Assume that it is more difficult, that it stays at the present market.

A. All right. That is 92 million.

Q. Yes, sir, and how would you compare it as a financial expert and as a person who is engaged in secondaries with the current Ford secondary?

A. I would say the General Motors would, because of the cumulative effect and the fact that they are coming every year, would have a greater impact.

Q. Would you have a judgment as to how much?

A. No. I don't know what the Ford offering is going to do. That hasn't taken place yet.

Q. Do you have an opinion as to what it will do?

A. No.

Q. You have an opinion, however, with respect to other secondaries——

A. I didn't study the offering.

Q. What are the differences between Ford stock and General Motors stock as a general investment proposition? [fol. 1725] A. Well, if you are asking me which one I would rather buy, I will answer it, but I don't think it means anything.

Q. I assume that you have testified that you are much more familiar with General Motors for a number of reasons, but as a financial expert, can you distinguish between Ford and General Motors stock as an investment?

A. Yes. They are different types of companies. General Motors Company is a very much larger company. It is better diversified. It is in a great many lines of business that the Ford Company is not.

Q. You think it is a better investment?

A. I would rather buy it myself, but on the other hand, there are far more shares of General Motors outstanding than there are of Ford, and for some people who believe that the outlook for the motor industry is good, and they wish to buy the securities of a good company in that industry with far fewer shares outstanding, I can see why they would readily buy Ford stock.

Q. But in your personal opinion, General Motors is a better investment?

A. All I said was that I would rather buy it myself.

Q. What is your opinion with respect to the relative investment merits of Ford and General Motors?

A. I am not going to express an opinion on something like that.

Q. Do you have an opinion——

Mr. Bushby: I object, your Honor. It is not relevant to this inquiry.

The Court: Sustained.

By Mr. Reycraft:

Q. Mr. Emerson, how did you reach your percentage conclusion with respect to the market effect of the distribu-
[fol. 1726] tion of the General Motors stock?

A. I thought I answered that yesterday.

Q. Well, perhaps you did. What I am curious about is how you reached the 10 to 12½ per cent which we have just broken down under this 20 to 25 per cent.

A. Oh, I explained how we got first to the million and a quarter shares a year. Are you asking how we got to that?

Q. Yes, sir. How you got from that to the 10 to 12½ per cent.

A. The million and a quarter shares a year are, roughly, the same size as the Sloan Foundation, the Sloan Foundation secondary, but they would be sold by a great many individuals and their impact on the market would be larger.

Q. What did you do, double your Sloan figures or how did you come to that conclusion?

A. No. Our estimate of the amount of stock that would be sold by individuals and trustees is about a million and a quarter shares. I didn't double it.

Q. Did you relate that figure to the Sloan offerings?

A. Well, I said that I thought it would have a much greater impact on the market than the Sloan offering, although the size, the number of shares is the same.

Q. Do you recall or do you have an opinion as to the length of time that any decline which resulted from the Sloan offering lasted?

A. May I hear that question?

(Question read.)

By the Witness:

A. Well, I don't think you can measure those beyond a few weeks, Mr. Reycraft, because so many other factors come into the market. There might be changes in automo-
[fol. 1727] bile sales, might be changes in bank rate. There are so many other factors, that, while it may still

be there beyond that period, it is awfully difficult to pinpoint it.

Q. Is it impossible to measure it after that time?

A. It is almost impossible to measure it after that time.

Q. You testified also, Mr. Emerson, with respect to problems which trustees would have under state laws in allocating dividend stock between principal and income. Can you tell me what the source of your information is with respect to those problems?

A. I was furnished a legal opinion on that subject by Covington and Burling which listed the various states where two different sorts of factors were involved, and I haven't read that now for over a month. It is rather technical. I also read the testimony of Mr. Ralph Lowell on the subject.

Q. Were you furnished any information concerning the wording or the provisions of any particular trust instruments?

A. No.

Q. Did you examine any trust instruments?

A. No.

Q. So your assumptions were based entirely on a legal opinion which you received which did not——

A. Well, I have also discussed the matter. I made no careful study by going around and interviewing the heads of trust departments of banks, but I have discussed it with several and I know that they feel that it is going to be a very great problem with them.

Q. But you do not have any information as to the quantity of the problem insofar as it breaks down the trust instruments among those which require——

A. It was my understanding that probably the bulk of the trust funds holding du Pont would come under laws where this would be—come under State laws, where this would be a material problem.

[fol. 1728] Q. By that, do you mean it would be required to be treated as a dividend?

A. That there would be that danger in the case of many of the trust instruments.

Q. But you do not know the extent to which these trusts are required to be treated in that manner?

A. I have not read any trust instruments.

Q. You also testified yesterday, Mr. Emerson, concerning a letter, I believe, written by Mr. Baldwin, on behalf of General Motors, concerning the payment of General Motors stock as dividends by that company in lieu of cash dividends.

I believe that Mr. Cox stated that that letter was covered by a subpoena which was served upon your firm. Was there an incoming letter or memorandum from General Motors concerning this matter?

A. If there was, I do not remember it. I think it was probably a telephone conversation.

Q. You think that the letter was written in response to a telephone conversation?

A. That is my belief, yes.

Q. Can you tell us who the stockholder was that raised the question?

A. I don't know.

Q. Do you have any views, Mr. Emerson, as to any mechanical or underwriting techniques which could be applied to facilitate the divestiture which has been proposed in the general outline of the Government's decree?

Mr. Cox: Could we have that question read?

(Question read by the reporter.)

Mr. Cox: I take it the question assumes the plan embodied in your decree which was filed with the Court?

Mr. Reycraft: It assumes the substance of that plan, yes, sir.

[fol. 1729] By the Witness:

A. The only technique, Mr. Reycraft, that I know of, would be the sale through a secondary offering, the formation of a large underwriting group handling the distribution in the normal manner.

By Mr. Reycraft:

Q. You do not have any ideas based upon your experience which you think would fundamentally change any of the problems?

A. No; the problems are inherent with any large operation of that kind.

Q. Now, you testified yesterday also, Mr. Emerson, I believe, that extending the time period to a twenty-year

period would change the range of the estimate of the market impact to approximately 12 to 15 per cent, is that correct?

A. That is correct.

Q. And can you tell us what went into these percentage figures?

A. Can I tell you what?

Q. How you arrived at these percentage figures as compared with the percentage figures for the ten-year period?

A. The amount that would be sold each year by the trustee would be cut in half. The sales by stockholders would be diminished. In the case of the larger stockholders, I do not know that they would be diminished materially. It was just a balancing of lower impact figures—of the lower impact of the smaller number of shares.

Q. Is it a fact that the secondary each year under this type of proposal, for 20 years would be less than the Sloan secondary which occurred in 1956?

A. That is correct, less number of shares, million shares. The Sloan secondary is about a million and a quarter.

[fol. 1730] Q. Yes, less in number of shares by about 25 per cent?

A. Yes.

Q. Now, you conclude, nevertheless, that there would be an impact of 12 to 15 per cent. Can you tell me how long after that secondary, the single secondary which you assume each year, that 12 to 15 per cent impact would continue or when it would make itself felt?

A. Well, if the Government plan were changed so that the distribution took place over 20 years, my estimate of the impact on the market of 12 to 15 per cent would be over that twenty year period.

Q. The entire time?

A. It is bound to vary from year to year and within the years, not only in the 20 year, but in the 10 year.

Q. Well, now, within the year—within the time period following this secondary in each year which you have assumed, how long do you think it would take for the market to adjust to that secondary?

A. I do not think the market would get back at all to where it would have been aside from such a Government order, Court order.

Q. Was your 12 to 15 per cent the low point that you assumed or is that a continual fixed period?

A. I think it would vary in that area.

Q. You do not have——

A. It cannot be pinpointed for any time.

Q. Pardon me?

A. It cannot be pinpointed.

Q. Now, assuming that the trustee did not have a requirement to distribute the stock, or assuming that the stock should be distributed on the assumption which Mr. Bushby gave you yesterday, that there would be no income tax [fol. 1731] attributable to it, what then would be your judgment as to the market impact over a ten year period?

Mr. Cox: May we have that question read?

(Question read.)

Mr. Cox: There are two assumptions.

By Mr. Reycraft:

Q. All right, take it separately, Mr. Emerson.

A. I said 15 per cent.

Q. You said 15 per cent?

A. Yes, at the beginning.

Q. Now, let me ask you this: Did you make a distinction between the two assumptions which Mr. Cox has pointed out, the assumption that the trustee has no requirement to distribute and the assumption that the distribution would be without income tax consequences?

Mr. Bushby: Well, I object.

The Witness: Yes.

Mr. Bushby: There was never anything about any trustee distributing anything. The assumption I made yesterday, was that the du Pont Company made a single tax free distribution and the trustee for Christiana, Delaware, and the stockholders of Delaware was ordered by the Court at the request of the Government to sell stock coming to those people in equal installments over a ten-year period. That is the only assumption I made.

The Court: Overruled.

By Mr. Reycraft:

Q. Will you answer the question, Mr. Emerson?

A. May I hear it?

Mr. Reycraft: Read the question, please.

[fol. 1732] (Question read by reporter as follows: "Q. Now, let me ask you this: Did you make a distinction between the two assumptions which Mr. Cox has pointed out, the assumption that the trustee has no requirement to distribute and the assumption that the distribution would be without income tax consequences?")

Mr. Bushby: I maintain it does not make any sense.

By the Witness:

A. I do not understand it.

By Mr. Reycraft:

Q. Well, if you do not understand it, Mr. Emerson, I will ask you this: On the assumption that the trustee has distributed all of the stock without income tax consequences——

Mr. Bushby: I maintain there is nobody suggesting a trustee distribute anything.

Mr. Reycraft: I am giving him a hypothetical situation.

Mr. Bushby: I do not understand. Can you point to any document where a trustee distributes anything in this case?

By Mr. Reycraft:

Q. Do you understand the question?

A. The trustee distributes all stock?

Q. The trustee or du Pont—or the stock is distributed. Perhaps that will help you.

A. 63 million shares?

Q. 43?

A. 43 million shares.

Q. Then you have the problem of selling 20 million shares over a ten-year period?

A. I see. Yes.

[fol. 1733] Q. Now, the question is, what in your judgment would be the market impact of such a sale?

Mr. Cox: On the market price of General Motors.

By Mr. Reycraft:

Q. On the market price of General Motors?

A. I testified to that. At the beginning of that period

it would be about 15 per cent, in my opinion, and later in the period it would be 12 to 15 per cent.

Q. Now, where did you get your 15 per cent figure?

A. 43 million shares would be distributed to stockholders of du Pont tax free. Some of those people are not going to want General Motors because they do not like General Motors as an investment. Some of them have enough General Motors already. So they sell General Motors.

Q. How much did you assume would be sold?

A. I never arrived at a figure but I did say that most of that would come the first year.

Q. Is it a fact that on such a distribution the distributees would allocate their basis if Mr. Bushby's assumption is correct?

A. Yes, yes.

Q. And that they would have a low basis for their General Motors stock?

A. Well, I do not know whether they would have a low basis for it or not. They would allocate the costs of their original du Pont to their remaining du Pont and to the General Motors.

Q. You have testified, I believe, and you have referred to some exhibits which indicate a rather low basis for the large amount of du Pont stock?

A. There unquestionably would be, yes.

[fol. 1734] Q. Do you think that a person who received General Motors stock on such a distribution and allocated basis, would consider this a handicap in selling the stock?

A. Of course, some of this would be allocated to corporations and to—where the tax—well, they would still have a capital gains tax.

Tax-free institutions wouldn't be bothered by that factor. I don't think that there would be a great deal of General Motors dumped on the market under a distribution of the type you have described.

Q. On the assumption that there was an allocation of their cost basis rather than the payment of an income tax?

A. Yes, that is right.

Q. Now did you make any quantitative estimate?

A. No.

Q. I assume you reached a quantitative percentage on the basis of your assumption. I would assume that you must have had some range in the amount you had in mind?

A. I had estimated that the impact the first year would be 15 per cent, and the impact in the subsequent years—the only factor would be the annual sales by the trustee—would be 12 to 15 per cent.

Q. I am asking you whether you made any assumption with respect to the amount of General Motors stock?

A. I did not.

Q. (Continuing) Which would be sold in the first year after a distribution on an allocational basis?

A. I did not.

Q. Do you have any opinion now as to the amount——

A. I haven't studied it.

Q. You haven't studied that question?

A. No.

Q. To what market factors or to what part of your experience did you relate this 15 per cent, then? Did you [fol. 1735] base it on the comparison with other stock issues?

A. I don't think I understand your question, Mr. Reycraft.

Q. Well, I am trying to understand how you got this 15 per cent.

A. For the first year?

Q. Yes, sir.

A. Well, I estimated that during the ten-year period it would be 12 to 15 per cent, and I knew there would be some extra selling in the first year. I didn't know how much. I therefore increased it somewhat for the first year.

Q. How much did you increase it the first year?

A. It was 12 to 15 per cent during the balance of the period, and it was 15 per cent the first year.

Q. So you attribute about 3 per cent to the distribution under the allocational basis method?

A. It could be.

Q. Pardon? It could be?

A. It could be.

Q. That is the estimate you used, however, is it not?

A. I said 12 to 15 per cent, thereafter.

I suppose if you took a mathematical average, of those two figures, that would be 13½ per cent; and you compare it with 15, and it is a difference of 1½.

Q. So your judgment then to the extent that we can break it down into percentage figures is that the distribution would have perhaps a one and one-half per cent impact?

A. In that area.

Q. Now comparing the fact that these annual secondaries which would be involved in such a distribution are less than the Sloan secondary, can you explain how you arrive at this 13½ per cent of market impact during——

Mr. Bushby: I don't understand that.

[fol. 1736] By the Witness:

A. That isn't true.

Mr. Bushby: I don't think I understand that.

By Mr. Reyeraft:

Q. Will you explain why it is not true?

A. They would be larger. There would be two million shares a year.

Q. Pardon me. You are correct.

Then relating it to the 1,300,000 shares of the Sloan secondary, are you able to draw any comparisons with respect to the market impact of the two offerings?

A. The continuous offering of two million shares a year is bound to have a materially larger impact on the market than the single offering of one and a quarter million shares a year.

Q. Now assume that, to make this situation analogous in some respect to the Ford Foundation selling, that the Court should say there would be a single secondary of two million shares in one year and that subsequent secondaries will be offered upon the further order of the Court.

In your judgment, what effect would this have upon the market impact?

A. Is this to be concluded in ten years?

Q. The assumption I gave you is complete—that the one secondary will be two million shares, other secondaries would be upon further order of the Court.

A. I don't know what that means.

Q. You don't know what that means?

A. Does that mean the next secondary could be 25 years later?

Q. If the Court should order it.

A. I think the question is so vague, Mr. Reycraft, that it is impossible to have an opinion. It would still have an im-
[fol. 1737] pact if the market knew that 20 million shares were going to be eventually sold. Buyers would give cognizance to that; but if you don't know whether it is going to come for one year or twenty-five years, the overhang is still there.

Q. In a manner similar to the Ford Foundation overhang?

Mr. Bushby: I object. There is no statement in this question of what happens to the 43 million shares.

Mr. Reycraft: We are still assuming the tax-free allocation.

The Court: Overruled.

Mr. Cox: Will the Reporter please read the last question?

(Question read, as follows: "In a manner similar to the Ford Foundation overhang?".)

Mr. Bushby: Objection.

The Court: Sustained.

By Mr. Reycraft:

Q. Will you compare the overhang which you believe would exist in the assumption I have given you to the overhang which I believe you have testified you think exists with respect to the Ford Foundation offerings or holdings?

A. I said there was one reason that the Ford offering did not hold up in price better was that people knew that there was a possibility that further sales would take place.

Now on what you are outlining, you are comparing a possibility with an inevitability, and I don't think you can compare them.

Q. You don't think there is any basis in your experi-
[fol. 1738] ence?

A. I think the impact in the distributions of General Motors would be greater than that that existed in the case of Ford.

Q. How much?

A. Materially.

A. I don't know.

Q. How much does that mean?

Q. Mr. Emerson, you testified earlier that with respect to General Motors rights offering, that your firm was prepared, in fact had quoted a price to the General Motors Corporation for the function of laying-off 50 per cent of the General Motors stock which was offered to its stockholders in the 1955 rights offering, is that correct?

A. I have testified to that?

Mr. Cox: Do you have a copy of the transcript, Mr. Reycraft, to which you are referring?

Mr. Reycraft: I will be glad to get the exhibit.

Mr. Bushby: I don't understand the question.

Mr. Cox: Perhaps if we get the transcript, you will understand it.

The Court: The Court stands recessed for ten minutes.

(Whereupon a short recess was taken, after which the following further proceedings were had.)

The Court: Proceed.

By Mr. Reycraft:

Q. Mr. Emerson, I will refer to Government Exhibit 67, which has been identified by you as a document coming from the files of Morgan Stanley.

On Page 8 of that memorandum, Mr. Emerson, there [fol. 1739] is a table in the left hand column headed, "Stocks Laid Off or Unsubscribed."

I referred earlier in my questioning to the fact that your firm did quote to the General Motors Corporation a fee for laying off 50 per cent of the stock during the rights offering in 1955.

I will show you this document to refresh your recollection. Now, approximately, how much——

Mr. Cox: Mr. Reycraft, perhaps it would make it easier for the witness if I gave him a copy and you take yours back.

Mr. Reycraft: All right.

Mr. Cox: That was Page 8?

Mr. Reycraft: Yes, sir.

Mr. Cox: Could the witness have time to look at the document, please?

Mr. Reycraft: He certainly may.

The Witness: Yes, sir.

By Mr. Reycraft:

Q. In proposing to the General Motors Corporation that your firm was willing to undertake the laying off of this amount of stock, this percentage, do you recall now what the approximate number of shares would have been that were involved in that lay-off?

A. The entire issue, as I remember it, was 4,300,000 shares.

Q. I believe so, and that would be about somewhat over two million shares at $5 par value stock?

A. Yes.

Q. And approximately adjusted for 1⅔ par value about six million shares?

A. Yes, except that price levels are quite different.

Q. The price levels are now higher, correct?

A. Yes.

[fol. 1740] Q. Do you recall or do you know whether your firm formed any judgment as to the amount of time it would have taken to lay off that amount of stock?

A. I don't think we seriously thought we would ever have to lay off any such figure.

Q. If it was laid off, though, it would be during the subscription period, is that correct?

A. It would only be laid off during the subscription period if our books justified it.

Q. If you had to exercise——

A. If we had orders for that amount of stock.

Q. And you were prepared to do it if you had to do it, were you not?

A. If we got the orders. That is always subject to that.

Q. You quoted General Motors a price to do it?

A. We told General Motors—this is all on the assumption that the subscription price would be 15 per cent under the then market.

We showed what the cost of the underwriting would be

if 10 per cent, 20 per cent, 30 per cent, 40 per cent and 50 per cent were laid off.

Q. Did you form any judgment at the time as to the impact on the market of these lay-offs?

A. No.

Q. You were willing to do it irrespective of the market impact?

A. I say we were willing to do it, Mr. Reycraft. We were willing to underwrite the issue. Now we can make no commitment whatever about layoffs when we underwrite the issue.

Q. But it is understood——

A. We set up machinery for it. We will do it if the orders are received, and we assume they would be, but we are not committed to it.

[fol. 1741] Q. Now, do you recall the percentage of the stock which was actually laid off for the particular issue? I believe you will find it was about 11.3 per cent.

A. It was in that area.

Q. About how many shares would that involve?

A. As I remember it, 530,000 shares, or something of that sort. That may include the unsubscribed, I don't remember.

Q. Now in a lay-off, you do have the advantage, do you not, of being able to extend it over a period of time as compared with the secondary?

A. Yes. You have a subscription period that is fixed. I don't know what it was in the case of General Motors, but let's say it is 24 days. You could lay off any time within those 24 days.

If the market went down and you were unable to lay off, you would then get delivery of the stock under your underwriting commitment at the end of the 24 days.

Q. Whereas in a secondary distribution, it is assumed that it will all be sold after the close of the market and within a day or two thereafter, is that correct?

A. That is correct, or you don't go ahead.

Q. Mr. Emerson, I believe you testified that in your opinion those stockholders of du Pont who are in the 30 per cent tax bracket would not wish to be bothered with the small or odd lots of General Motors stock.

A. Some of them.

Q. Did you make any quantitative estimate?

A. I did at the time, but I don't remember now what it was.

Q. Do you have any idea of the percentage?

A. It was low.

Q. Is it your recollection that the people who fell in this 30 per cent bracket were largely odd lot holders of du Pont?

A. Their average holdings, as I remember, was 25 shares.

Q. So that they were odd lot holders, were they not? [fol. 1742] A. That was in the bracket of one to a hundred shares. So automatically——

Q. Less than a hundred is an odd lot, is it not?

A. Yes. Except some of them, the bracket went to and including one hundred shares, so some of them would have been holders of a round lot.

Q. So that many of those stockholders apparently were willing to be bothered with a small amount of du Pont stock, is that correct?

A. Many of them were willing to be?

Q. Yes, sir. They bought it in an odd lot.

A. Oh, yes.

Q. So how do you distinguish between their feeling toward holding an odd lot of du Pont and their feeling toward holding an odd lot of General Motors?

A. Well, they hold an odd lot of du Pont, and they get .13 per cent of that number of shares of General Motors each year, and obviously the General Motors odd lot is going to be very much tinier than the du Pont odd lot, both in number of shares and dollar amount.

Q. So you distinguish on the basis of degree rather than on the basis that they don't like to have odd lots?

A. Oh, yes.

Q. You have also testified, I believe, that people don't like to receive dividends in stocks of another company?

A. That is right.

Q. Can you explain the basis for your opinion on that subject?

A. They don't like the accounting problems involved. It is a taxable distribution, but it is not in cash, so that if they are going to get something to live on and something to pay their taxes, they have got to make sales.

It is a nuisance to them. This particularly is true of smaller stockholders.

[fol. 1743] Q. Do you know of any companies which do pay dividends on the stock of another company?

A. I know of only one that has done it with any degree of regularity.

Q. Which one is that?

A. Standard Oil Company of Indiana.

Q. Do you know what their experience has been in this respect?

A. I don't understand what you mean by "their experience."

Q. Well, as compared with the experience or reaction of their stockholders.

A. Well, the amount that they distributed was pretty small in proportion to what is involved here. I have never studied the market of Standard Oil of New Jersey to see if there was any selling taking place by Indiana stockholders that would push the market for Jersey down.

Q. Mr. Emerson, I believe you testified yesterday that investment companies had net changes in their holdings of General Motors stock which decreased from the end of June, 1955, from 3,108,000 to 2,035,000 at June 30th of the following year.

A. To June 30 of last year.

Q. Oh, I see. It is a three-year period, then?

A. That is correct, a three-year period.

Q. Do you know what General Motors stock was selling for at the end of June of 1955?

A. No.

Q. This was shortly after the rights offering, I believe. Does that refresh your recollection?

A. Well, it would have been probably in the 90's.

Q. And on the three-for-one basis, that would be about 30 on the basis of present par value, would it not?

A. Yes.

Q. What is it selling for now, do you know?

A. General Motors?

[fol. 1744] Q. Yes, sir.

A. 46.

Q. So if they held on to their General Motors stock, they would have profited, would they not?

A. That is correct.

Q. Do you have any idea as to where that stock went? To whom these investment companies sold it?

A. It went into the market. I don't know who bought it.

Q. Over the Exchanges, do you know of any secondaries?

A. I know of no secondaries through which investment companies sold stock. They may have done it on the Exchange. There were a couple of secondaries in General Motors, but we handled neither one, and I don't know the source of the stock. I don't even remember now when it took place.

Q. You referred to two secondaries in General Motors. One, I believe, has consisted of 267,000 shares, some time in the Spring of last year.

A. Harriman Riply had one. I do not even remember when it was.

Q. Now, in your judgment, did the disposition by these investment companies of over one million shares of General Motors stock over the three year period have any effect on the market?

A. Well, if you sell ten shares of stock it has a miniscule effect and certainly if they sell one million shares, it is bound to have some effect. That was probably handled carefully. It was handled over a three-year period.

I have never checked. I do not know whether it would be possible to measure that impact but it must have been there.

Q. Do you know how many sellers were involved, how many investment companies were covered by that study you referred to?

A. I did not check them.

[fol. 1745] Q. There were a substantial number, were there not?

A. There were several.

Q. By several, how many do you mean?

A. Well, as I remember it——

Mr. Reycraft: If Mr. Emerson could see the transcript of his direct examination this might move faster.

(Mr. Cox hands transcript to the witness.)

By the Witness:

A. It shows that the number of companies which held General Motors decreased by nine. Now, this does not

show how many decreased their holdings but were still stockholders.

Q. How many of these companies are covered by the study to which you referred?

A. 250.

Q. You do not know, do you, whether all 250 were selling?

A. Well, 250 could not have been selling because at the beginning only 86 had it. At the end 77 had some. Now, in other words, nine sold all their holdings. How many others sold part of their holdings I do not know.

Q. You do not have any reason to believe, do you, that there was any coordinated selling between these companies?

A. Coordinated selling?

Q. Yes, sir.

A. I would think there was not.

Q. So that these were sellers who had no affiliation with each other with respect at least to the marketing of this stock?

A. That is correct.

Q. And it was uncoordinated selling?

A. Uncoordinated selling except it was done by highly sophisticated institutions.

Q. And you are unable to discern, I take it, any impact [fol. 1746] on the market price of General Motors from that uncoordinated selling?

Mr. Cox: That isn't what the witness said before. You have asked him that question once and he answered it.

By Mr. Reycraft:

Q. What is your answer to the question?

A. I could not hear it.

Mr. Reycraft: Will you read the question, please?

(Question read.)

By the Witness:

A. I do not know whether I could have discerned it or not. I made no attempt to check it.

By Mr. Reycraft:

Q. You have referred, Mr. Emerson, to the fact that your firm has participated in a large measure in General

Motors financing over the period of time that you have been associated with Morgan Stanley. Is the same thing also true with respect to the du Pont Company?

Mr. Bushby: I think that is an assumption that is not based on the testimony given here. I think you better break that up. There are two questions there. Let's have two questions.

The Court: Sustained as to the form of the question.

By Mr. Reycraft:

Q. Mr. Emerson, will you state the extent of your firm's participation in du Pont financing over the past thirty years.

A. The du Pont Company in that period has sold [fol. 1747] two issues of preferred stock to the public through underwriting groups headed by our firm.

Q. Do you know of any other financing by the du Pont Company through any other investment firms, investment banking firms?

A. Through another investment firm? I do not.

Q. During that period——

A. I think there was one transaction, not financing the company itself, but the purchase of another company, or something of that sort, or sale of a company through another investment banker.

Q. During this period of time, did your firm regularly give financial advice to the du Pont Company?

A. No, only when asked.

Q. How regularly was that?

A. I would say it was rather infrequently.

Q. So is it true that your only association with respect to the financing matters of du Pont was as to these securities offerings?

A. No, we have made a few other studies for them from time to time, not of material importance as I remember them.

Q. Now, I am not sure whether you have testified as to this or not, but Mr. Bushby asked you some questions with respect to the effect on the market price of Christiana stock of divestiture. Do you know at the present time what the market price of Christiana is?

A. I know a few days ago it was about fifteen thousand three hundred.

Q. And do you know what the principal assets of Christiana are?

A. du Pont stock.

Q. And do you know what the relation between the present market value of du Pont stock and the price of Christiana stock is?

A. As of a week or ten days ago, when we last computed it, Christiana stock was selling at a discount of about [fol. 1748] 17 per cent from its asset value, but in that asset value no allowance was made for capital gains taxes should they sell out their portfolio.

Q. Do you have any judgment as to the reason Christiana sells at a discount from its underlying assets?

A. Well, one reason is it is an extraordinarily high price.

Q. Is there any other reason?

A. It is an inactive market. I think it is true that many non-diversified investment companies sell for less than their theoretical asset value. I think it is general.

Q. You think that is generally true?

A. Yes.

Q. Do you think it is generally true that they sell for as much as 17 per cent below?

A. I have made no check of that recently, Mr. Reycraft; but there have been times when some of them sold for substantially greater discounts than that.

Q. Do you know of any at the present time?

A. Well, I would think that probably the Atlas Company, Atlas Corporation, does; but I don't know. I haven't checked the figures.

As of a little while ago, U. S. and Foreign did, but I haven't checked those figures recently.

Q. You testified, I believe, Mr. Emerson, that you were not aware of any purchaser who ever had any difficulty in buying General Motors stock. Is that the substance of your testimony?

A. That is correct—if he was satisfied with the market.

Q. Pardon?

A. If he was satisfied with the market.

Q. Are you familiar at all with the experience of the

General Motors Corporation in purchasing stock for its bonus programs?

A. In a vague way, yes.

[fol. 1749] Q. Do you have any reason to believe that that company has had any difficulty in purchasing all the stock it wanted for its bonus plan?

A. I don't think it has had any trouble.

Q. Not that you know of?

A. Not that I know of.

Mr. Reycraft: I have no further questions.

Cross-examination:

By Mr. Dallstream:

Q. Mr. Emerson, I discussed with you this morning for a few minutes, before the opening of court, your views with respect to the take-down provisions of my plan?

A. Yes, sir.

Q. And I would like to ask you three or four questions for the record about that.

Have you read the form of proposed judgment and my report to the Court which has been filed in this case?

A. I have.

Q. Are you familiar with the so-called voluntary take-down provisions of that program?

A. Yes.

Q. Mr. Emerson, I have requested the Internal Revenue Service to issue a ruling to the effect that no stockholder of du Pont will be taxed by reason of the entry of the proposed judgment which I request until and unless he shall have applied for and shall have received permission of the Court to take down the individual shares which would be deliverable under that plan in respect of his du Pont holdings.

In the questions that I am going to ask you now, I want you to assume that the Internal Revenue Bureau has rendered the ruling which has been requested and that [fol. 1750] no tax of any kind will result to any du Pont shareholder except the shareholder making application, and then only as and when he has applied for and has received permission to take down the special common stock and the General Motors shares deliverable under that arrangement.

Do you understand that assumption?

A. Yes, sir.

Q. Well, for the purpose of definition, Mr. Emerson, you may recall that I refer in my judgment to the stock that would continue to have an interest in General Motors, as du Pont common, and the shares which would be deliverable under a take-down and which would have no interest in General Motors stock as du Pont special common.

A. Yes.

Q. Do you have an opinion as to whether the market value of the shares of du Pont common would be greater or less than the combined market value of the attributable shares of General Motors and a share of du Pont special common?

A. In my opinion, General Motors—I mean du Pont common would have a slightly lower market value than the combination of the other two.

Q. Is that typical upon breakups?

A. I think so, yes.

Q. In your opinion, would this have any effect upon the buying interest in du Pont common?

A. I don't think I understand your question.

Q. Well, after the plan was put into effect, so that the du Pont special common was available for distribution, would there be any effect upon the market for du Pont's common stock, ordinary common?

A. Well, there would be buying of that stock by arbitragers.

Q. And by all persons who would otherwise be willing to buy du Pont common if the takedown plan had not been put into effect?

A. That is correct.

[fol. 1751] Q. Do you think there would be a buying interest on the part of the public in the du Pont special common which would be issued?

A. Yes, definitely.

Q. That would afford a market opportunity for those persons who wanted to be interested solely in the chemical industry, without the appurtenant General Motors investment, to make that investment?

A. That is right.

Q. Mr. Emerson, the person who found it otherwise

attractive to take down his shares would have the advantage, upon receiving the special common and the appurtenant General Motors shares, to have greater freedom of choice in the future about the disposition of his investment, would he not?

A. He would have it in two pieces, and he could dispose of either one that he wished.

Q. Precisely.

A. (Continuing) Pertaining to either one, as he so desired.

Q. Do you think there would be a when-distributed market established immediately upon the entry of a judgment embodying the takedown plan?

A. I am not sure that it would be immediately, but at an early date. It would depend on what the time schedule of the whole plan was going to be. But a when-issued market would unquestionably develop at the appropriate time.

Q. And as persons took down shares of du Pont special common and placed them on the market, and the arbitragers got to work, you would have a floating supply of the special common which would make a market?

A. There would be a market which at first would probably be a rather inactive market, until a supply was built up, a floating supply; but there would be a market in the new common stock.

[fol. 1752] Q. Have you any opinion as to the source of takedowns under the takedown plan, as to what classes of shareholders would find it attractive?

A. Well, I would assume that tax-free institutions of all kinds would probably do it; that most corporate stockholders would do it. I am assuming that Christiana and Delaware would do it, but I don't remember whether your plan provides that the Court would have to approve that or not. The Court would have to approve all, though.

Q. Yes, the Court has to approve all.

A. Surely. Assuming that the Court would approve, then I would assume that they would. However, that would be up to their Boards of Directors, and I can't speak for them.

I would think that investment trusts would. There might be some foreign holders that would. I am not sure how the withholding tax would apply in a case of this sort.

Q. You didn't mention the individual shareholders whose

tax brackets might be very, very low, even less in some cases than the capital gains tax situation; nor have you mentioned those individual investors who might have a loss carried forward or a loss year.

Would there be some instances in which they could take advantage profitably of the program?

A. In the second category, there would be some number of individuals who would exchange on that basis, take down. I am not sure that I understand your first category.

Q. Well, there might be individuals who either have little or no tax to pay in a given year, who might find it attractive to take advantage of it.

A. Yes, that is correct.

Q. Now, the corporate arbitragers, do you think they would, themselves, create a market for that stock and be constant buyers for du Pont, and carry through the take-down?

A. As long as there was a spread in their favor, so that [fol. 1753] they could make a profit by buying du Pont and selling du Pont special and General Motors, they would be active in that market.

Q. As a practical matter, as the arbitragers began competing, they would narrow that gap and tend to destroy it, would they not?

A. The gap would narrow down to such a point where there wouldn't be too much of a spread.

Q. Then when they stepped out of the market for that reason the gap would tend to widen again?

A. Possibly.

Q. For financing purposes of the du Pont Company, if the special common shares were listed and active trading had been established upon the New York Stock Exchange, do you think there would be any reason why, for financing purposes, the shares would not find a ready market if du Pont wished to raise additional capital through the sale of additional special common?

A. I think there would be no problem at all, even before listing. I think the du Pont Company could create a market, if they wanted to, by financing through this new common stock.

Q. I take it, Mr. Emerson, that every person taking down would then be in a position to have their General Motors

shares where they would receive the entire dividend paid on those shares, instead of the paring down of that dividend by the inter-corporate dividend as at present?

A. That is correct.

Cross-examination:—(Continued)

By Mr. Reycraft:

Q. Mr. Emerson, when did you first consider the mechanics of a voluntary take-down program?

A. When did I, individually?

[fol. 1754] Q. Yes, sir.

A. I would guess six months ago, at least; maybe more. I don't know.

Q. Do you know whether your firm had ever given any consideration to this plan before you did?

A. They had not given consideration to Mr. Dallstream's plan.

Q. To any take-down plan?

A. Yes, that had been discussed.

Q. When was that?

A. I don't remember. I know we studied it, discussed it.

Q. Were your conclusions or your firm's conclusions the same as those you have just stated?

Mr. Cox: I object, your Honor. Mr. Reycraft, I think, has frequently gone beyond the scope of the direct, but this is too far.

Mr. Dallstream opened up this question on his cross examination. We did not produce Mr. Emerson here to testify about the draw down plan, and he has expressed no opinion on his direct testimony. Any report or conclusions that were given by his firm prior to his testimony in this case were given to du Pont from the point of view of work product which we obtained as a result of our investigation of the various possibilities.

I think it is improper to bring those conclusions into the case at this time. I don't remember what they were but——

Mr. Reycraft: I assumed that Mr. Dallstream's questions were direct examination; and of course to the extent that they weren't, they were beyond the scope of your direct.

Mr. Cox: He is our witness, not Mr. Dallstream's witness.

[fol. 1755] The Court: The objection is sustained—not within the scope of the direct.

Mr. Reycraft: I have nothing further.

Mr. Cox: I have just about three very short matters that I would like to ask the witness about.

Redirect Examination.

By Mr. Cox:

Q. Mr. Emerson, I would like to direct your attention to du Pont Exhibit 32, and just ask you, are all the offerings listed on that exhibit secondary offerings?

A. No, sir.

Q. They are simply offerings that were above certain amounts that were not made in the form of rights offerings to the shareholders of the offering corporation, isn't that correct?

A. That is correct.

Q. Yesterday, in the course of the direct examination, Mr. Emerson, I think by inadvertence I may have asked you some questions which suggested that all of the issues listed on that table, which is Exhibit 32 for identification, were secondary issues. May I assume that in answering those questions you did not intend to accept the erroneous assumption that I had made in the question?

A. That is correct.

Q. Your answers were intended to apply, so far as applicable, to all the issues on Exhibit 32, whether they were secondaries or not?

A. That is correct.

Q. Mr. Emerson, yesterday in the course of your cross examination, you were asked some questions about assumptions you made with respect to the time under the Govern- [fol. 1756] ment plan in which the trustee would make his annual offering of stock; and you were asked this question on Transcript Page 1688, which I will read, and then if you like you may look at it.

Mr. Reycraft said:

"Then I would go back to the question I asked you, did you assume that the annual distribution would take place on a fixed date or within what period of time around a fixed date would you make your assumption?

A. Well, I assume that it would come at a regular time. Whether it would be on the first of January, that never really entered my mind,

"Q. You assumed it would be approximately a fixed date? A. I assumed it would be approximately a fixed annual date, yes."

Do you wish to look at that passage in the transcript?

A. Yes, I just did.

Q. Now the question I should like to ask you, Mr. Emerson, is whether, in making your study, you assumed with respect to the sales to be made by the trustee in the Government plan that in each year of the 10-year period the trustee would make an offering of the stock required to be sold, that is, the stock allocable to Christiana, Delaware, and stockholders of Delaware, on a fixed date that would be the same fixed date in each year, year in and year out? Is that your assumption?

A. No. My assumption was that there would be a schedule that the trustee would, in general, adhere to, unless market conditions prevent that. Once the trustee has received the stock, and if he doesn't go ahead and sell, he is assuming a responsibility that is very heavy.

Q. Why do you say the responsibility would be heavy, [fol. 1757] Mr. Emerson?

A. Well, he is dealing with other people's money, and if he has the stock in hand and he uses his judgment, that by waiting a couple of weeks or a couple of months he could get a point or more, a higher price for those stockholders, for Christiana and Delaware, and the stockholders of Delaware, and if he guesses wrong, he is in a very embarrassing position; and I would assume that a trustee in a case like that would feel that the responsibilities on him were so great that the amount of discretion he could use would be rather limited. In other words, the reasons for delaying sale would have to be very strong reasons; otherwise, he would go ahead in the normal course of events, and sell the stock as soon as he had it in possession.

Q. Do you assume that if there were strong reasons, he could, under the plan, postpone the sale, however?

A. Oh, yes.

Q. Are you aware of any special situation with respect to the stockholders of du Pont who are also stockholders of

Delaware that might influence the trustee's judgment as to when sale should be made?

A. Well, of course, the stockholders of Delaware have to pay a tax on the General Motors as turned over to the trustee, and that tax is based on the value when the trustee gets it.

Then if the trustee, by using discretion and guessing wrong, obtains for them in the market a figure that might be well less than that on which they have to pay their income tax, they might not get enough out of the sale to even pay their tax.

Q. Is it a fact, Mr. Emerson, that the longer in any year the trustee postpones the sale that would normally take [fol. 1758] place in that year, the closer he gets to the time when he has to begin to plan for the sale of next year's?

A. That is inevitable.

Q. You are aware, are you not, Mr. Emerson, that so far as the distribution date of the stock is concerned as compared with the date at which the trustee might sell the shares allocable to Delaware, Christiana and the stockholders of Delaware, that the distribution date under the Government plan is a fixed date?

A. I believe that it was, and that fixed date would also be, I assume, the date in which the trustee would receive the shares that would go into making up his sale.

Q. Just one more subject, Mr. Emerson, and I shall finish.

You were asked the question yesterday at the beginning of your cross-examination about your participation in certain secondary issues managed by Morgan Stanley.

I should like to ask you to tell us, very briefly, how the firm of Morgan Stanley operates; specifically, how decisions are made with respect to questions that arise in the course of a securities offering. I have in mind such questions of spread; if it becomes necessary to estimate market impact, that question or any other related questions. How are those questions decided at Morgan Stanley's?

A. Well, someone comes to Morgan Stanley, to some of the partners, and says that he would like to discuss a secondary.

Decision would be reached as to who would do the nego-

tiating with the seller. That man would be sort of the head of the team. The firm would act as a team.

All questions of spread, whether we wanted to handle the transaction or not, whether we felt we could handle it, [fol. 1759] what the impact might be, the mechanics of it, would all be worked out by the selling partners.

Q. Have you participated in those discussions and decisions among members of the firm of Morgan Stanley with respect to the secondary issues that the firm has handled?

A. Oh, I have sat in the discussions of every one, unless I happened to be away on vacation.

Q. Did you at my request, Mr. Emerson, attempt during the overnight recess to refresh your recollection as to certain secondary offerings in which you took a particularly active part?

A. Yes.

Q. Do you have that list with you?

A. Yes, sir. These, as I remember, were where I handled the negotiations with the seller, or I may have had another partner associated with me, but I was in on the negotiations.

Q. Will you give us the names of some of those issues in which you have done that?

A. Yes: American Can issue of 1955—these are not in any particular order.

Q. That is all right.

A. (Continuing) The Lykes Steamship issue of 1958; Warner Lambert issue of 1955; International Harvester, common and preferred, 1954; Grand Union, 1952; Cone Mills, 1951; the du Pont offering of 1944; the Humble Oil of 1950——

Q. That is enough, Mr. Emerson. I just wanted to get——

A. There are a number of others here if you want them.

Mr. Cox: That is all.

Mr. Bushby: Just one question, Mr. Emerson.

Redirect Examination.

By Mr. Bushby:

Q. You recall your testimony yesterday that no sales could be made by the trustee under the proposed Govern-

[fol. 1760] ment decree which would realize for the trustee a price sufficiently high to reflect the fair value and true worth of the stock?

A. Unless the price was sufficiently high.

Q. Your testimony was, I believe, that no sales would realize the fair value and true worth of the stock?

A. That was true in my judgment.

Q. So that no sales will take place under the proposed Government decree unless this provision is violated or winked at, is that correct?

A. Well, it is a matter of judgment as to whether the stock is then selling at its fair value or not. In my opinion it wouldn't be. In the opinion of the trustee it might be, and he might authorize it, but all I am doing is expressing my opinion.

Q. In your opinion it would not?

A. That is correct.

Mr. Bushby: That is all.

Recross Examination.

By Mr. Reycraft:

Q. Mr. Emerson, Mr. Cox asked you questions concerning your assumptions as to annual dates of both sales and distributions.

As I understood your answers, the sales and distributions would take place at approximately the same time under your assumption?

A. No, not quite, Mr. Reycraft.

I assumed that the distribution to the du Pont stockholders and to the trustee would take place simultaneously.

I assumed also that the trustee would not register an issue until he had the stock in hand. He might have asked the General Motors Company, if he were forehanded, to have a registration statement all ready to file. But, let's say, for instance, that the du Pont Company made its distributions on January 1st, and the trustee received the [fol. 1761] stock for the two million shares approximately that it is going to sell at that time.

I assume that he would have a registration statement ready to file, and that having received the stock, he would proceed to file the registration statement unless, in his

judgment, the market were in terrible shape; and that 20 days later, unless the market conditions were unusually adverse, he would go ahead and make the sale.

Q. So that your conclusions were based on the assumption that both the distribution and the sale by the trustee would take place within less than 30 days, let us say?

A. In normal cases, yes.

Q. Now, would it affect your conclusions if the trustee were directed by the Court to make the sale six months later rather than within the 30 day period?

A. No.

Q. Would you explain why you don't think it would be affected?

A. I think that if that were true, the impact would be spread over the years somewhat better but, you see, I haven't tried to pinpoint these any way, Mr. Reycraft.

I estimated that it would be in the area of 20 to 25 per cent. I think that figure is still good, even though the Court order to order the trustee to delay the sale.

Q. But you are unable to pinpoint the percentage impact?

A. That is right.

Mr. Dallstream: If the Court please, I feel this character of examination is improper unless Government counsel are willing to say now that they wish to alter their plan so as to provide that the trustee shall come in and let the Court determine each year when it is going to be sold.

[fol. 1762] Mr. Reycraft: I am examining his assumptions, which I think I should be permitted to do.

Mr. Dallstream: It is not in the plan. The trustee is given full discretion in the plan. It creates quite a different situation where the Court is expected to guess the stock market to carry out this arrangement.

The Court: At the opening of the trial, Mr. Reycraft said they may alter their plan and submit changes.

Mr. Reycraft: Our conception of this hearing, your Honor, is that it is to help the Court in finding out what the best way to do this is.

The Court: Well, that objection is overruled.

Mr. Cox: May we have the question and answer read now?

(Record read.)

Mr. Cox: I object to the form—well, you answered it.

The Court: You are objecting to the form of the question?

Mr. Cox: He has answered it. It is all right, your Honor.

By Mr. Reycraft:

Q. Will you repeat your answer, Mr. Emerson?

Mr. Cox: Well, if you are going to repeat the answer, I will object to the form of the question.

The Court: Read the answer, please.

(Record read.)

By Mr. Reycraft:

Q. You referred to a list of secondaries, which I believe you have with you. Will you read the rest of the issues you have on that list?

A. Where did I end?

[fol. 1763] Q. With Humble Oil.

A. Ingersoll Rand of 1943; Otis Elevator of 1948; Standard Oil of New Jersey of 1942; J. P. Stevens, 1948; Western Leaseholds, 1951.

Mr. Reycraft: Thank you. That is all.

Mr. Cox: That is all.

The Court: Any further questions?

Mr. Bushby: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Tierney: If the Court please, as you know, we have taken the position consistently here that General Motors is not a defendant, but we are desirous to be helpful to your Honor if we can.

I would like to call a witness who is a local banker, who has charge of the responsibility of one of the largest trust departments in the country, Mr. Thomas Beacom. With the Court's permission, I would like to examine him.

Mr. Reycraft: May I ask, your Honor, whether du Pont has completed its case?

Mr. Cox: No. I apologize. Because of certain questions

of convenience, we have agreed to interrupt our presentation to allow Mr. Tierney to present this witness.

Mr. Reycraft: This is for a single witness?

Mr. Tierney: Yes.

THOMAS H. BEACOM, a witness called on behalf of General Motors Corporation, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tierney:

Q. Will you give the reporter your name, please?

A. Thomas H. Beacom.

[fol. 1764] Q. Where do you reside, Mr. Beacom?

A. Winnetka, Illinois.

Q. What is your present occupation?

A. Vice-president in charge of the Trust Department of the First National Bank of Chicago.

Q. How long have you held that position?

A. Since January, 1946.

Q. May I ask you, please, to tell us for the record what has been your formal education, Mr. Beacom?

A. I was graduated from the University of Notre Dame in 1920; Harvard Law School, 1923.

Q. What prior positions have you held, beginning with your graduation up to the time when you went into the banking business?

A. I was with a law firm in Chicago briefly until April, 1924, when I joined the First National Bank.

I was there for the better part of five years. I left to go to Wichita, Kansas, where I acted as vice-president and trust officer with the largest trust company in that state for three years.

I returned as trust officer of the First National Bank in February of 1931, and have been there since that time.

Q. When were you elevated to the office of assistant vice-president?

A. 1936.

Q. Then you became vice-president in what year?

A. 1941.

Q. Now, outside of your activities as a trust officer in the bank, have you engaged in any activities in the banking profession outside of your regular banking work?

A. I was president of the trust division of the Kansas Bankers Association. I have been chairman of the legisla-
[fol. 1765]. tion committee of the trust division of the Illinois Bankers Association.

I have been president of the Corporate Fiduciaries Association of Chicago; a member for two terms of the executive committee of the trust division of the American Bankers Association.

Q. In addition to those activities, have you been affiliated with any other businesses in Chicago or in connection with your banking work?

A. Business organizations?

Q. Yes.

A. Yes.

I have, of necessity, in connection with my work, at times served on the boards of corporations, some of which I continue on and some of which I have discontinued.

Presently I am a director and member of the executive committee of the Catholic Press; director and member of the executive committee of M. L. Rothschild and Company; director and member of the executive committee of Stewart-Warner Corporation; director of McLaughlin Manor House Coffee Company, Midland Warehouse, Chicago Junction Warehouse, and a number of companies.

Q. In your spare time have you had some chance to do some work in the charitable and educational field and, if so, will you tell the Court, please?

A. I have been president, and I am still a director and a member, of the Finance Committee of Hull House. I have been a director and member of the Finance Committee of the United Charities.

I have been past-president and am now a director and member of the Finance Committee of the Catholic Charities; a vice-president presently, and in the past treasurer for many years of the Community Fund of Chicago.

[fol. 1766] I have been treasurer of the Board of Trustees at the University of Notre Dame, handling endowment funds.

I was a Founder Member and past-president of the

Economic Club of Chicago. I was at one time a chairman of the Public Affairs Committee of the Chicago Association of Commerce. Also a few other things, perhaps.

Q. It looks like you have been quite busy.

Now, Mr. Beacom, just tell us briefly—we are interested in knowing something about your Trust Department in the First National Bank of Chicago.

As vice-president in charge of that department, what do you consider your responsibilities to be? Tell us something about that.

A. Well, my duties are necessarily not detailed. I have the responsibility for the over-all administration of the department.

Q. How large a department is it in number of persons?

A. Well, we employ something over 520 people. We have in our custody assets valued in excess of 6 billion dollars. We have general recognition, I think, as one of the larger trust companies. Figures are not easy to come by in that business, but the general consensus is that it is certainly one of the largest west of New York.

Q. Could you give me some idea as to about what the number of the fiduciary accounts are, approximately?

A. Active accounts number now in excess of 10,000.

Q. Now, I presume this department is divided—strike that. I assume the responsibilities of operating the trust department are spread out somewhat among your staff?

A. Naturally, yes. They are specialists.

Q. You have specialists of various kinds?

A. We are divided into corporate and personal trust [fol. 1767] activities. There is a separate division dealing with pension and profit sharing funds.

We have a group of specialists who deal with the legal problems and have contact with the practicing attorneys of the city. We have tax men, investment analysts, account review men, administrative officers, who have the responsibility of direct contact with the public; tabulation division, various mechanical departments.

Q. And I take it that the decisions that are made by the trust department of your bank are the decisions of the combined efforts of all of your staff and finally a conclusion is reached, is that correct?

A. Decisions in what area?

Q. Well, in matters that require some exercise of judgment or discretion other than on routine matters?

A. Well, we operate through committees in various areas under Regulation F, which is controlling, issued by the Board of Governors of the Federal Reserve System, controlling in the case of national banks having trust departments.

There is a requirement that there be appointed a trust investment committee. In compliance with that, our directors, who cannot abdicate the final responsibility that they bear for the securities that are acquired, that are retained or disposed of in the trust department, do appoint a committee consisting of senior officers of the bank, whose responsibility it is to carry out and exercise the authority that the Board has to change the investments in the trust department and discretionary accounts.

I happen to serve as a member, and have for many years, since 1931, I believe, as a member of that trust investment committee.

There is another Board-appointed committee, a corporate [fol. 1768] trust committee, which passes upon the acceptance of corporate business. There is an account review committee which is the internally operating committee, which has the responsibility of examining into the multiplicity of details that affect the individual accounts, each of which differs in its terms and provisions and requirements.

Q. And your function is to work with all of those committees as the head of the department?

A. And to coordinate their activities.

Q. And you participate in the important decisions that are made by the trust department?

A. I do, yes, sir.

Q. Now, in the trust accounts and the fiduciary accounts of the bank, do you find that they vary?

A. I think it is fair to say that only in rare cases are there any two that are identical. All of them differ in many particulars, and most in form and substance.

Q. Could you give us some instances of difference in form as well as substance?

A. Well, in the conferring of powers they all have to be examined with minute care. I recall a trust that we have where in the exercise of our discretion we are limited in

investments to municipals north of the Ohio River and east of the Mississippi.

Another is where we are obligated to find six per cent first mortage investments secured by real estate in the County of Cook, Illinois.

We have others where it is mandatory upon us to retain certain assets. The discretion to sell those particular things is taken from us, although we may have broad discretion in other areas. I think those are illustrative of the differences that there are in agreements with respect to investment powers.

[fol. 1769] Now, obviously, they will differ, too. If A creates a trust for B, C creates one for D, there is no relationship between A, B, C and D; they are all different parties, and have to be dealt with as people.

A large part of my job is to try to deal with these as people.

Q. So it could be safely said that on this question of investments for these estates, trust estates, in some instances you have broad discretion, in some instances you have no discretion?

A. Correct.

Q. In other instances your discretion is limited?

A. That is quite correct. In some cases we have consultants or co-trustees who share responsibility with us, and in other cases we have simply custody and act on the direction of other owners.

Q. Has the adoption of the prudent man rule in the State of Illinois added to your powers and given you broader discretion?

A. Yes. I think that it is proper to state as background, if this is not generally known, that prior to 1945 Illinois was what is known as a legal list State. The Legislature by statute defined the area in which trustees could invest funds.

This restriction could be waived by the creator of the trust and he would give broader powers, but in order to do so he had to act affirmatively and confer the powers by explicit language.

The reverse of that situation has prevailed since the adoption of the prudent man statute. Now, if the settlor of a trust wants to minimize or restrict or limit the dis-

cretionary powers of a trustee in the area of investments, he has to indicate in the instrument how he wants to do it.

Now, the prudent man statute does not give carte blanche [fol. 1770] to buy anything that the trustee has a fancy to buy. It is founded on a rule that was originally adopted in Massachusetts in this country and has prevailed in the east, in that State, for a great many years.

The substance of it is that a trustee acting under it can buy anything that a prudent man acting reasonably could do in similar circumstances, which has been interpreted to mean that a man in the circumstances of a trustee——

Q. So the burden——

A. (Continuing) Naturally, that gives a very wide discretion.

Q. So the burden upon the trust officer or the one in charge of the trust department is to see that they use reason in the exercise of their powers to invest in securities, and that is a burden upon you, isn't it?

A. It is quite a responsibility; yes, sir.

Q. Have you in preparation for your testimony here called upon your staff to assemble and get some information for you and have you advised them with respect to what your testimony would be here?

A. I have.

The Court: This will be a good point to recess.

(Whereupon a recess was taken in the above-entitled trial to 2:00 o'clock of the same day, Thursday, March 19, 1959.)

[fol. 1771] Before Hon. Walter J. LaBuy, Thursday, March 19, 1959, 2:00 o'clock, p.m.

Proceedings resumed pursuant to adjournment.

Present: Same as before.

Thomas H. Beacom, a witness called on behalf of General Motors Corporation, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination. (Continued)

By Mr. Tierney:

Q. Mr. Beacom, do you know how many different stocks are held in your various accounts in the Trust Department?

A. 3,560 different stocks.

Q. Stocks of all kinds?

A. Of all kinds.

Q. Have you prepared or caused to be prepared a study of your holdings of General Motors stock?

A. Yes, sir.

Q. And do you know from memory how many shares of General Motors stock are held in the accounts of the bank?

A. Over 850,000. I don't recall the exact figure.

Q. 853,650 shares, would that be correct?

A. That is correct.

Q. And taking those, as of what date was that, do you recall?

A. This was done in July of 1958.

Q. And applying the market value to those shares $46 a share, what is the arithmetic for the total value of those shares? Would it be $39,267,900, is that correct?

A. That is correct.

[fol. 1772] In how many accounts in the bank do you have General Motors stock?

A. As of last July, 1822.

Q. Do those holdings of General Motors stock compare, as large holdings, with holdings of other companies?

A. Yes. Both du Pont and General Motors would be in the first ten or twelve large holdings.

Q. How many shares of du Pont stock do you hold?

A. I don't have the record for reference, Mr. Tierney, at the moment.

Q. Do you have anything to refresh your recollection?

A. Yes, I have.

Q. I don't think there is any dispute about it.

Suppose I mention the figure 133,490 shares.

A. That is correct. I was thinking of the lesser figure, as worked out in the tax computation.

Q. Now then, taking the market value of du Pont stock at 230, your total holdings of du Pont stock would aggregate how much, do you know?

A. The aggregate figure on 133,000 at 30?

Q. At 230.

A. At 230. You have the figure, do you?

Q. Yes, $30,702,700.00.

Is that the accurate calculation? Is it a matter of arithmetic.

A. The would be correct.

Q. How many accounts hold du Pont stock, if you know?

A. May I refer to a memorandum?

Q. Surely.

A. Du Pont, as of July, was held in 946 accounts; at $230.00 a share, market value, it would be $30,702,700.00.

Q. Now when you say the bank holds these stocks, they do not own the stocks, is that correct?

A. Oh, indeed not; not as a corporate entity. It does violence to the facts—I think we are commonly recognized [fol. 1733] as the largest stockholder of Illinois in the du Pont Company, but it is a distortion of the truth to consider that that represents a bank holding. It is a holding that is in the name of the bank or its nominee as fiduciary, and the ownership is spread among these 946 trusts.

Q. And the beneficiaries of those trusts are——

A. Many and varied. They run into the thousands, as a matter of fact, and includes spouses, children, charitable institutions, hospitals—all kinds of beneficiaries.

Q. And I take it that if the Government's proposed decree were entered here, those are the persons who would be affected, the beneficiaries, is that correct?

A. The entire impact would fall on them, yes.

The Court: Do you have any statistics showing the average number of beneficiaries in your trusts?

The Witness: The average number, Judge?

The Court: Yes.

The Witness: Of beneficiaries in the 946 accounts, or overall?

The Court: In the 946 accounts.

The Witness: I have only the figure here of 579 accounts in which the beneficiaries and the remainder-men have different positions. I would guess that—no, I don't have a figure, and I could only guess it would be three or four in most of the accounts.

The Court: Do you have any statistics on the average number of beneficiaries under your overall accounts, altogether? I think you said you had ten thousand accounts.

The Witness: That is right. I think the only thing [fol. 1774] in a statistical fashion that I have is that they

include residents of every State in the United States and sixteen foreign countries, but the number of them I don't have.

The Court: You have no statistics on the number?

The Witness: No.

The Court: That is, the average.

The Witness: No, I do not.

The Court: Very well.

The Witness: I could get that.

Mr. Tierney: If that would be of interest to your Honor——

The Court: I think not.

By Mr. Tierney:

Q. Now, Mr. Beacom, have you studied this plan proposed by the Government?

A. Yes, sir.

Q. And tell us briefly what you understand its provisions are with respect to the General Motors stock held by du Pont.

A. Well, I understand that the proposed decree involves the distribution to the holders of du Pont stock at the rate of 1.38 shares of General Motors for every share of du Pont held; and that the aggregate distribution to those stockholders will amount to 43 million shares, exclusive of those that go to the Christiana and Delaware stockholders, and that those shares will approximate 20 million, and they are to go into forced sale in the hands of a trustee, the 20 million.

Q. 43 million distributed and 20 million to be sold within a 10-year period?

A. Within a 10-year period.

Q. (Continuing) By the trustee.

Now, in your bank, have you given consideration to the [fol. 1775] likely tax effects that would be occasioned by this distribution of General Motors stock?

A. Yes, we have.

Q. Do you understand what the tax ruling of the Internal Revenue Service is with respect to the treatment that will be given to those shares of stock?

A. It is my understanding that that ruling makes taxable

as ordinary income the shares of General Motors stock that would be given to the du Pont stockholders.

Q. Now have you given any consideration to the question of whether any of those shares that were received on distribution would be sold as a result of the distribution because of tax effect?

A. Yes, sir.

Q. Do you understand what that distribution of the 63 million shares would amount to annually, about? It would be one-tenth of——

A. 63 million——

Q. (Continuing) 43 million, on the distribution in kind in stock?

A. That would be 4,300,000 shares annually.

Q. Are you also familiar with the general tax rates that are applicable to income, as to the range of the tax rates?

A. Familiar in general, yes.

Q. What do you understand that to begin with, what per cent? How is it graduated?

A. 20 per cent to 91 per cent, the impact on the individual taxpayer.

Q. Have you prepared or caused to be prepared an exhibit which indicates the tax implication or effect upon the accounts of the trust department of the bank as a result of the distribution of the General Motors stock?

A. Yes. That is as of last July.

Mr. Tierney: I will ask the reported to mark this as General Motors Exhibit Number 9 for identification.

(Thereupon said document was marked General Motors Exhibit 9 for identification.)

[fol. 1776] By Mr. Tierney:

Q. Do you have a copy of this exhibit, Mr. Beacom?

A. Yes, I have.

Q. Was this document prepared by the Trust Department of the First National Bank of Chicago?

A. Yes, sir.

Q. Does it purport to give the estimated tax impact of the Government plan on taxable accounts in the Trust Department holding du Pont stock?

A. It does.

Q. Was this prepared under your direction and supervision?

A. It was.

Q. And so far as the calculations are concerned, do you vouch for their accuracy?

A. Yes, sir.

Q. Turning now to the first column in this exhibit, I note the figures 859.

A. That is correct. That is the number of accounts after taking out 87 tax exempt trusts. That is the number of accounts that hold stock that under the proposed decree and the ruling of the Internal Revenue Service would be taxed.

Q. As I understand it there were 946 accounts that had du Pont stock?

A. That is correct.

Q. And of those 946, 859 are subject to tax?

A. That is correct.

Q. Now, the next column is the number of shares held in those 859 accounts?

A. That is correct; 104,260 shares.

Q. What have you computed the average effective tax rate to be on those?

A. 51.7 per cent.

Q. Now, I notice in the second from the last line of the exhibit the words, "Value of Distribution." You have taken 104,000 shares, the number of shares held, is that correct?

A. 104,260 shares, yes, multiplied by 1.38 to get the [fol. 1777] number of General Motors shares that would be put into these 859 accounts, if this decree were carried out.

Q. Then I notice that you have multiplied by the figure 39. What does that figure indicate?

A. That indicates a depreciated value. The present market is about 45⅞, I think was the close last night, and in calculating the tax impact here, we have figured that the stock could or might be distributed when it had a value of 39, recognizing that at the time of this distribution there would be some severe impact on the market.

Q. You have calculated that difference between $46 and $39 as the difference between——

A. That is correct, and used $39 against the total num-

ber of shares, and we would have a value in those shares of General Motors stock distributed to these 859 trust accounts of $5,611,000.

Q. Based upon that valuation and applying the tax rate of 51.7 per cent, what would be the estimated tax to the accounts in the trust department of the bank?

A. We calculated that cost at $2,901,000.

Mr. Tierney: I offer in evidence General Motors Exhibit No. 9.

The Court: Any objection?

Mr. Owens: No objection.

The Court: It is received.

(Said exhibit, so offered and received in evidence was marked General Motors Exhibit No. 9.)

By Mr. Tierney:

Q. Now, Mr. Beacom, in addition to the tax cost of this distribution as you have just described, would there be an impact on the value of the General Motors stock held in [fol. 1778] your Trust Department?

A. We believe that there would be, yes.

Q. What do you think would cause that?

A. Well, the distribution of such a large amount of stock by the du Pont Company to so many thousands of owners would precipitate so many tax questions, so many investment questions, that it would cause an entirely new shuffle of ownership among the stockholders.

Q. In addition to that tax burden, do you think that the value of the General Motors stock would be affected as a result of this plan?

A. It is our belief that the value of both du Pont and General Motors stock would be affected adversely.

Q. Do you understand that there are to be 20 million shares sold within a period of ten years?

A. Yes.

Q. Are you familiar with the total trading of General Motors shares on the market annually normally?

A. Normally about 7 million or 7½ million shares on the New York Stock Exchange alone; something like 9 million to 9½ million, including all of the Exchanges.

Q. Have you considered this sale by the trustee each year of 2 million shares in relation to the normal trading?

A. We have. That would add approximately 30 per cent to the normal volume of trading, and we think it would distort the supply and demand factors with the inevitable result that buyers waiting for more favorable prices would stay away from supporting the market, thereby causing a drop in the price.

It has not been our belief to date that this decree is very likely to be adhered to because of the severity that it represents in the way of punishment of innocent people, such as the beneficiaries for whom we act.

[fol. 1779] Most of these stockholders have come into the picture in the last forty years since du Pont acquired the General Motors stock. It is a common fact, among people in my business, commonly regarded as a factor of strength, that du Pont continues their investment in General Motors. Similarly, it is considered, in the case of du Pont, a fine element of diversification.

As a result of the factors that we believe induced people over the years to become stockholders in both of these cases, it is our strong belief that if that equilibrium is upset by this forced sale of 2 million shares a year that will continue yearly for a period of at least ten years, there is bound to be a severe impact, a depressant effect on the market in the price of both stocks.

Q. Now, in giving this matter consideration, have you taken into consideration the fact of the offering of the Sloan Foundation?

A. Well, we know about the Sloan offering, yes.

Q. How does that, in your thinking, compare with the present suggestion of the Government's proposed decree?

A. I don't think there is any proper comparison. That was a one-shot operation. It was a sale of a large amount, it is true, at the price at which it sold, but still, large as it was, it was less than this promises to be annually for a period of ten years.

There was no expectation that it would be followed up by another offering of similar size, and therefore people could determine the price they wanted to pay in the light of the knowledge they had that this was not going to be an opportunity presented again by the Sloan Foundation.

Q. There was no overhang, I take it, in the Sloan Foundation, as was mentioned here?

[fol. 1780] A. No overhang, no. This suspension of as many as 20 million shares in the indefinite future is bound to be a cloud on the market.

Q. In your opinion, do investors take that into consideration, the question of whether or not there would be an overhang?

A. Very definitely. They drag their feet when it comes to purchasing in the expectation that if this stock is to be sold, it will have to be offered at a price that will move it. That price is almost certain, under the circumstances, to be less than its present price.

I think as an example of that fact, is that in every large company, where there is a dominant stockholder with a major interest, in a sense it could be said that his shares overhang the market, because it is probable that upon his death there will have to be liquidation of those shares in order to pay death taxes.

That is by no means a certainty, because a man may have so planned his affairs that the stock does not have to be sold for taxes. But that kind of an overhang, which is existent in any case of that kind where there is a large dominant holder, is not the kind of thing we are talking about here.

Here, you would have a Court order which made the disposition of this very large block of stock inevitable. It isn't a question of when or if. It is a certainty, and all computations of value would be related to that certain knowledge, in my opinion, and certainly because the informed buyers stand back and wait for a lower price.

Q. And that would be the effect on the demand side of the market for General Motors stock? Would that apply to institutional investors, do you think?

A. I think it would more clearly apply to them than the others.

[fol. 1781] Q. So you would conclude, I take it, from what you have said, that as a result of this overhang and this forced sale, there will be little increase in the demand to offset the increase in the supply you put on the market?

A. Well, I do not know where that increase in the demand

would come from, and I can see there definitely is an increase in the supply.

Q. And what do you think the effects of the market would be—strike that.

Do you think that this increased supply, without a similar increase in demand, would affect the market price of General Motors stock?

A. Yes. I have already stated that I think it would exert a depressing effect. To me it is like we are observing now a ball rolling along the table; when it reaches the edge it has a precipitant drop. Until that time, it is on a fairly level keel.

This is the circumstance akin to the dropping of the ball off the table. When this decree is entered, if it is entered, compelling the distribution of this large amount of stock into the channels proposed for it to the present stockholders of du Pont, with that penalty of a tax on it, I am satisfied—in fact, our studies indicate with respect to these accounts that we supervise, that there would of necessity be a large amount of stock that was received by du Pont stockholders that would in many cases have to be sold in order to raise the money with which to pay the taxes.

You cannot eat a stock certificate. We cannot distribute General Motors stock to the beneficiaries. It would have to be converted into cash and in the process of conversion there would be a heavy penalty in the form of a tax.

Multiply us by other trust institutions throughout the country and I think you would have an avalanche of offerings of du Pont stock, a depressant.

[fol. 1782] Q. What would be in your considered judgment, and that your bank has come up with as a result of the studies, the minimum effect on the price of General Motors stock if the Government decree is entered and executed?

A. Would you like me to give you these figures?

Q. Do you have a percentage figure? Have you come up with any percentage figure as to what the depressant would be?

A. Well, I did not use it in those terms. By working backwards on this arithmetic it can be translated into a 15 per cent discount that we have used for purposes of our estimate.

Q. Do you think that would be the minimum?

A. I think it would be the minimum.

Q. It might exceed that?

A. It might well exceed that. Variations in the price of both stocks for other reasons, absent this factor, have been greater than that from year to year.

Mr. Tierney: Mr. Reporter, mark this for identification, if you will, please.

(Thereupon said document was marked General Motors Exhibit 10 for identification.)

By Mr. Tierney:

Q. Mr. Beacom, Mr. Burnham has just called my attention to a statement which I think you made which was inaccurate, which I did not catch. You referred to an avalanche of selling of du Pont; you meant General Motors, did you not?

A. Yes.

Q. Mr. Beacom, I show you a document which the reporter has marked GM Exhibit No. 10 for identification. Was that prepared by your institution and under your supervision?

A. Yes, sir, it was.

[fol. 1783] Q. And does it state accurately what it purports to state?

A. Yes, sir.

Q. Turning now to the exhibit, will you explain that for us, please?

A. Well, this shows that as of July, 1953 we had 853,650 shares of General Motors stock. The next column is based on a figure of $46, which is what it has brought currently. I might explain that in order to calculate the tax impact it is necessary to scrutinize these hundreds of accounts that hold the du Pont shares.

That operation, in trying to calculate the effective tax rate, takes quite a little time. This business of taking the present market value can be done, of course, from day to day, but applying to the shares of stock that we held last July, if I bring those shares down to date, we had $39,267,900 worth of General Motors stock in these 1822 accounts last July.

We estimate that if the stock were to be taken at $39 on distribution that would be a value of thirty-three million —we calculated this—$33,292,350, or a loss of $5,975,550 in the value of the General Motors stock that we already hold, that we are frozen in on, so to speak.

Q. And that would be occasioned by the Government proposed decree?

A. That would be occasioned by virtue of the decree being entered in the form that it has been proposed if it should be entered, yes.

Q. Now, take the next.

A. The next line shows the General Motors stock that would be distributed, and that figure is 184,216, which relates back to the number of du Pont shares that we own multiplied by 1.38.

We would receive on our du Pont stock 184,216 shares of General Motors, which would make our holdings, based on these July figures, of 1,037,866 shares of General Motors. [fol. 1784] The total value of the General Motors stock which we hold and which would be distributed to us at yesterday's figure of 46 would be $47,741,836.00.

Now, we estimate that that would depreciate to at least—a minimum depreciation, take it down to $40,476,744.00; that, in other words, as a result of the entry of the decree we could expect a depreciation of about $7,265,000.00 in the General Motors stock that we presently hold in these many hundreds of accounts, and which would be distributed to our accounts.

Now, to that in the next line we add our estimated tax impact that was shown on your Exhibit 9, $2,901,000.00. That leads us to the conclusion that the entry of this decree would cost us in the accounts that we presently have to which this General Motors stock might be distributed as much as something between 10 and 12 million dollars.

Mr. Tierney: I offer in evidence General Motors Exhibit No. 10.

Mr. Owens: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked General Motors Exhibit No. 10.)

By Mr. Tierney:

Q. In the course of this hearing there has been a suggestion made that the Court might appoint some financial advisers that could so regulate and adjust the distribution and sales of General Motors stock as to minimize or eliminate the harsh effects of the decree. Do you think that is feasible?

A. I do not. There is also imposed upon that trustee the burden and responsibility of timing his sales in getting what he concluded is the fair market value. There may be [fol. 1785] trustees that would volunteer for that job, but I would not be one of them. In my judgment, it is a virtual impossibility for a trustee to discharge that duty and to do it without dire consequences.

It has been suggested here in some of the testimony I have heard that perhaps it should be done under decree of Court, that appeal be made for Court guidance in it. My experience with efforts to get Courts to address themselves to lifting that very serious responsibility from the shoulders of a trustee is not usually very successful; it always requires time, and it is always costly. I simply don't believe that that is a practical solution, to expect any trustee to take two million shares and dispose of it at a fair market value annually over a period of ten years and satisfy—I would say satisfy anyone.

Q. Well, could these financial advisers do anything to avoid the tax impact?

A. They couldn't do a thing to avoid the tax impact.

Q. Or could they control the selling for tax purposes?

A. They could not control what I think of as the disorganized selling that would occur among the individuals that for tax reasons or other reasons sufficient to them in their independent thinking would prompt them to sell.

Q. Now, in the administration of the trusts, Mr. Beacom, do you envisage that you will have some problems of allocation in the event that the decree were entered?

A. We will have a multiplicity of such problems.

I have heard it suggested, incidentally, to go back to that last question a moment, Mr. Tierney, that some trustee might do something in the way of dollar averaging on sales.

It seems to me this represents a misunderstanding of [fol. 1786] what dollar averaging amounts to. On the

buying side, it is not uncommon for large institutional investors or corporate organizations of one kind or another to buy with regularity on the theory that they can't time the purchases always to get the low price.

I think I mentioned earlier that no trader in possession of a large block of stock to dispose of for a trustee like ourselves, would go out into the market and announce what his total package was, because he would expect if that offering exceeded the available demand, that the price would drop under him; he therefore feeds it out.

Now, I don't see how a trustee or a financial adviser could, on any proper concept of dollar averaging—they might decide to let go of a few shares every day, if they could get rid of them, but that is by no means averaging; it is a depressant, and it will drive the market down.

Q. To attempt to do that would drive it down. Is that your opinion?

A. It certainly would, and it would be known to the public from the beginning that this was coming; there is no way of concealing it. If the order goes through, there it is; it has got to be sold, and only the question of time is open.

Q. Now let us get to the subject of your problems of the administration of these trusts in which you have du Pont stock.

Could you tell the Court in your own words, without any questions, what those problems would be?

Mr. Owens: I think we are entitled to have a question addressed to the witness, your Honor.

Mr. Tierney: You will get more intelligent answers, perhaps, if you let the witness tell us; but I will go forward. [fol. 1787] Mr. Owens: I think you ought to conduct the examination.

By Mr. Tierney:

Q. Mr. Beacom, would there be some problems of allocation involved with this disposition or the receipt of these shares?

A. There would be many problems involved on the entry of such an order, innumerable problems for us, from a practical standpoint.

Q. Will you tell us what those problems would be?

A. Well, now, you speak of "allocation." Are you speak-

ing of whether we would put this money received, the proceeds of the General Motors stock, or the stock itself, in the income or principal?

Do you have reference to that?

Q. That is what I have reference to.

A. A fundamental problem for any trustee is of course the trust accounting problem, to distinguish between the rights of a life tenant and the rights of a remainderman. Most often they are not the same parties.

Our figures indicate that in 579 of the 946 accounts, I believe it is, of the accounts that we have holding du Pont stock, the life tenants, the people receiving the income currently, and the remaindermen, that is, the people who will receive the principal eventually, are different; they have conflicting interests. Now if this distribution is ordered, there are 23 states—among them Illinois—which have an act called the Uniform Principal and Income Act or a variant thereof, which for certain accounts only will determine the answer to whether the principal or the income gets it, and that will not be determined with finality, because every [fol. 1788] account has to be analyzed to determine whether or not the particular statute applies.

Let me illustrate that in this way.

Prior to 1941, when this Act was adopted in Illinois, there was very great uncertainty as to how certain types of dividends should be treated, and that statute attempted to cure those difficulties by specifying that in the case of extraordinary dividends and regular cash dividends they ought to go to income. The donor of a trust can depart from the requirements of the statute by specific language in the instrument, if he is advised to or chooses to or thinks of doing it. In most cases they do not. Therefore, a trustee has to abide by the statutes in determining whether these unusual dividends will go to principal or to income.

From a practical standpoint we would be immediately confronted with this kind of a question: Should we notify everybody that owns du Pont stock that there will be a tax on the distribution of that General Motors stock that is ordered distributed? That is the 4,300,000 a year. We would have no choice. We wouldn't have time enough to examine every document to make a preliminary and tentative conclusion of our own as to wether or not the pro-

ceeds of that stock would go into income. By the time we made that study, it would be stale news, too late for some of them to act in their proper self interest, and there would already have occurred whatever detrimental effect in the market there would be resulting from the decree.

Now, these people as a practical matter would come in either with or without counsel to ask what we meant by it.

Some would say that they were quite certain in their own mind that it should go to income. They may be accom- [fol. 1789] panied by another member of the family who would say he was equally certain that it ought to go into principal.

One would have an adviser saying to him this should be treated as a liquidating dividend. Under the Illinois statute if du Pont chose to label it a liquidating dividend, to some extent our problem would be simplified. But that would not be universally true, because not in all States do they have the same kind of provisions that we have in the Illinois statute.

Other people would insist that the disbursement in their particular accounts of the proceeds of the sale of that stock, less taxes, to the life tenant was detrimental to their interest as remaindermen, and depleted the estate, and they would urge that we retain that in the corpus on the theory that du Pont was in effect being partially liquidated.

These are the facts of life about what would happen. We would have a multitude of people asking questions, and we wouldn't know the answers. The answers cannot be determined by any general rule of thumb.

They have to be determined by an analysis of each instrument, and we would therefore, in all probability, in most cases feel it necessary to go into Court and ask for a construction.

Q. Would a test case in any one case determine the problem for you?

A. It would not. Aside from the interpretation and construction of the individual trusts, you would have the differing results of States that don't follow the same rule.

For example, these are either extraordinary dividends or liquidating dividends in terms of accounting rules.

If they are extraordinary dividends, the common prac-

tice is to treat them as income distributed to the life tenants.

[fol. 1790] If they are liquidating dividends, the common practice is to put them into corpus.

But States differ as to how they treat an extraordinary dividend. Some allocate part to principal, part to income, depending upon the source.

The same thing is true with respect to liquidating dividends. Certain States require apportionment.

Well, you will have the problems, first, of determining what they are; next, where they go; and, finally, who is going to pay the cost of litigation to get a final and definitive Court decision.

Q. In the last instance, as far as you are concerned, it would have to be a decision by the Court?

A. In most cases that would be what most trustees would consider the most prudent and safest course for them to follow.

Q. I presume that litigation might be costly to the beneficiaries?

A. It would be costly, and one of the subjects of disagreement, one of the subjects that is covered frequently in the cases, is who pays that cost? Does it come out of corpus? Does it come out of the life tenant?

Q. Under the circumstances, what would you recommend that your Trust Department do in the event this decree were entered with the General Motors stock that you received?

A. What do I recommend that our Trust Department do?

Q. What would you recommend, if you have an opinion on that. Do you know the answer?

A. Well, I will remind you that that decision would have to be made by a committee. Each would be entitled to his own opinion as to what was best to do or what would be best to do.

[fol. 1791] All would be furnished the detailed information about every account, including the known powers of the trustees, the purposes and objectives to be served by the trust, the peculiarities and eccentricities of the parties that we had to deal with; the question as to whether or not they had independent representation, and if they did not, whether they would have to get such representation.

There would be the necessity of welding all of these viewpoints into a common action, and when we got all through, we would not be doing the same thing in all accounting.

Is that the general intent of the question?

Q. That is the practical problem that confronts you, is it?

A. Yes.

Q. Why wouldn't you sell the du Pont stock to avoid the difficulty?

A. Because that would not avoid the difficulty for us. I have seen in the press some suggestions originating with vox populi writers and also quotes from various bankers in different parts of the country that that is the simple solution.

You don't meet the problem head-on. You dodge it by disposing of the stock before the General Motors stock is distributed.

In my opinion, that doesn't answer the question at all. It begs it. Because some day at some time we are going to know what the final decision of the Government is, and at that time——

Q. You said "the Government."

A. What the decision of the Courts is to be. At that time, and not until then, it will be possible for frustees to make rational determination as to the course that they [fol. 1792] ought to follow. In the meantime, they are like everybody else, having to speculate on what is going to happen.

I think the evidence is on the side now of saying that a preponderance of the present holders do not look forward to such dire consequences as are envisaged in this proposed decree being visited upon them as present stockholders.

They bought into this situation with their eyes open. As I mentioned before, I think many of them were induced to do it because they looked favorably upon the relationship between these two companies. They are going to be guided in their final action by questions of self interest, cost to them, availability of alternate investments.

Our decisions will be controlled—I think it is fair to say that we will appear to have to the public at large a

case of schizophrenia because we will have cases of individual co-trustees overruling our judgment. If we should decide to hold, they may tell us to sell. If we should decide to want to sell or recommend to sell, they may overrule us for reasons that they consider sufficient that are unrelated to these questions of tax impact.

But in any event, what I am trying to say—and using too many words to do it, I think—is that it is no solution to the problem to simply sidestep it by selling the du Pont stock so you won't be faced with this multiplicity of questions that I have mentioned.

Mr. Tierney: That is all. Thank you, Mr. Beacom.

Cross-examination.

By Mr. Owens:

Q. Mr. Beacom, my name is Paul Owens, and I am one of the Government counsel in this action.

[fol. 1793] I understand from your direct testimony that you are one of the members of the trust investment committee of the bank with which you are associated?

A. Yes, sir.

Q. On General Motors Exhibit Number 9, you indicate that there are some 859 trust accounts in your bank, in which some of the assets consist of du Pont stock.

A. That is correct.

Q. On this exhibit I note that you have the figure of 51.7 as representing the average tax rate. Would you tell me how that was calculated, sir?

A. Yes. We took the 859 accounts that were determined to be subject to taxes, that is, after excluding the tax exempt accounts.

We took the shares that they had, that each account contained, and made an arithmetical computation of the average, which came to 45 per cent as the tax rate of the high and low and the intervening.

Q. Do I understand you to say you calculated the effective tax applicable to each trust separately?

A. Yes. There are certain accounts that we know. The ones, for instance, where there is an accumulation, and I think there are 67 of those. We pay the tax. We know what that rate is. That entered in as a component.

We have information from customers where we don't have all of their assets, but we make returns to them of the income that is derived from funds in our custody.

In order that we may have an intelligent guide to the portfolio, they tell us very frequently what their outside income is, and therefore what tax bracket they are in.

We knew that for our 859 accounts. Those were added together——

Q. Was that dollar value or percentages?

A. Percentages.

Q. So this is an average of the percentage of each shareholder?

A. This is, in the 859, for example, they might range [fol. 1794] from 20 per cent to 91, being the low and the high of the tax rates. That came out to an average of 45.

Q. So that——

Mr. Tierney: Let him finish his answer, Mr. Owens, if the Court please——

The Court: Yes. Complete your answer.

By the Witness:

A. (Continuing) That came out to 45.

Then there was a weight given to the differences in the holdings of du Pont stock; the relative share of an estate that might be in du Pont stock. That brought us to this average effective rate, as we call it, of 51.7.

Q. This would be weighed according to the number of shares?

A. Of du Pont.

Q. That are held——

A. In these separate accounts.

Q. In the various accounts?

A. Yes, after that original average.

Q. So that represents, does it, the average effective tax rate at which all the shares in all the accounts would be taxable?

A. That is right. That is the best figure we could arrive at.

Q. Do you know, sir, what the distribution of the 859 accounts is in numbers of accounts in each of the respective tax brackets?

A. No, I don't have that detail. You mean, how many are in the high brackets and how many in the low?

Q. That is correct.

A. I don't have the breakdown of the 859.

Q. Do you know primarily in terms of the trusts that are concentrated in the lower end of the income tax bracket, [fol. 1795] if this is an average? In terms of numbers of trust accounts, do you know where they would be concentrated as far as the effective tax rates go?

Mr. Tierney: Do you understand the question?

The Witness: I don't believe I do understand that question.

By Mr. Owens:

Q. In other words, this is an average of all the shares in all the accounts. I am trying to find out——

A. This is an average of the tax rates that are applicable to the beneficiaries of all these accounts.

Q. That is right. Do you know whether, say, 60 per cent of the trusts are in the 20 per cent bracket, 10 per cent of the trusts in the 30 per cent bracket? Do you have any idea of the distribution of the trusts among the various income tax brackets?

A. No, I do not, Mr. Owens. I can't break it down that way.

Q. You didn't undertake to compute that in connection with the figures?

A. That has been done, but I haven't seen any figures like that.

Q. But in making your determinations with respect to, for instance, sale of du Pont or not selling du Pont, in order to avoid a tax problem, I take it that you would consider each account individually?

A. Correct, yes, sir.

Q. And consider the effective income tax rate of that account?

A. That is right.

Q. So that if a greater number of accounts were in the lower income tax bracket, you would make a different determination than you would with respect to a stockholder or a trust that has a very high income tax rate?

A. I don't believe that it follows that we would neces- [fol. 1796] sarily make such a different determination be-

cause there would be so many other factors entering into the decision.

Q. As far as that factor goes, the tendency would be a smaller tendency to require you to dispose of du Pont?

A. That is very true.

Q. Now I take it that the trusts in your bank that are administered by your bank are classified in various ways, is that correct?

A. You mean as between executors, administrator——

Q. No, not as far as administration is concerned, but as respects the treatment of the income. For instance, you have some trusts that are accumulation trusts, is that correct?

A. That is right, yes.

Q. What are the provisions with respect to income in an accumulation trust?

A. Well, the taxes are paid by the trustee. It is a separate tax entity.

Q. Do you envision any problem in respect to cumulation trusts with respect to apportionment of the income?

A. No, not on accumulation trusts as such. There are some accounts in that same category, for example, where the, oh, the income might be used for the support of a mausoleum or cemetery lot, or something of that kind, where it might be necessary to sell in order to provide the means of distributing.

Q. But in general with respect to accumulation trusts you would not anticipate any problem in allocating the income since they generally provide that the income goes or is accumulated to the corpus?

A. That is right. That would be a lesser problem.

Q. Now, with respect to the matter of a lot of trusts that are classified in your bank, I take it, as discretionary [fol. 1797] trusts in respect to the matter of the distribution of income.

A. That is right.

Q. Do you anticipate——

A. Just a moment now; did I understand you correctly, discretionary with respect to the distribution of income?

Q. Yes.

A. That is not the terminology that I meant. That suggests in my mind something that I think I want to straighten out if I can. What we call a discretionary account is

one where the discretion is in the trustee to pick and choose investments. I thought the import of your question was did we have many accounts where it is up to us to decide who gets the income; is that correct?

Q. With respect to you or the other trustees, to determine the allocation of income between the life beneficiary and the remainderman.

A. That usually is not in our discretion. It may be in a co-trustee. A sprinkling clause, you mean?

Q. Well, that is a common form of trust, is it not?

A. That is not an uncommon form.

Q. Pardon?

A. That is not an uncommon form.

Q. With respect to such a discretionary trust, you would not have any legal problem in connection with the allocation, since the trustee has the power to make that determination?

A. I believe I would have to ask you, Mr. Owens, to spell that question out for me a little more, because I do not think I am——

Q. Well, if one of the trustees has the power to make a determination as to the amount of income that is to go into the corpus and the amount that is to be distributed currently, then you do not have a legal problem with respect to allocating it between a life tenant or a life beneficiary and a remainderman?

[fol. 1798] A. Well, a very common part of the boiler plate is that the trustee can determine what is principal and what is income.

Q. That is a common provision?

A. Yes.

Q. A boiler plate?

A. But no trustee would think of exercising that with caprice or arbitrarily or deciding on his own initiative that, "I am going to call this income, and I am going to call the next thing principal."

Q. Well——

A. He has to adhere to certain rules, fundamental principles.

Mr. Tierney: Mr. Owens, I ask you if you will allow the witness to finish his answers.

The Court: Yes, allow the witness to complete his answer.

By Mr. Owens:

Q. I take it that you are telling me then, if I understand it, Mr. Beacom, that the trustee would not make that determination capriciously but under his normal duties as a trustee's fiduciary obligations, is that right?

A. That is right, he would have to make it in conformity with what his understanding was of the requirements of the law and the statutes, and if he had doubt about that, or if besieged by conflicting interests urging him as to two different courses of action, he would have no recourse except to go in and ask a Court about it.

Q. Well, where the trust instrument itself gives him the discretion to divide it between the corpus and the income beneficiary, and that is spelled out in the trust instrument itself with clarity, there is no occasion for him to resort to legal proceedings, is there, in connection with deciding how he believes the income should be distributed?

[fol. 1799] A. Yes, I believe many cases there would be. Let me see if I can illustrate what I am trying to say there.

I mentioned that under the Illinois Statute if du Pont, for example, were to declare this to be a liquidating dividend, partial liquidating dividend, that would be determinative of all the accounts since 1941, because they are the only ones that are affected by the Principal and Income Act.

It would permit a trustee in Illinois with an account set up after 1941 to put that into principal.

Q. And he has that power anyway——

A. In the absence of the instrument saying anything else, he would have that power by reason of du Pont making that declaration.

Q. Let me see if I understand—I do not think you are answering my question, sir. Let me clarify the question for you.

Mr. Tierney: If the Court please——

The Court: Allow him to complete his answer and see whether he answers it or not.

By the Witness:

A. (Continuing) I only meant that even if you conceive that that is true in Illinois, it is not necessarily true in another State. Either one of the 26 or 27 States that does not have the Principal and Income Act, or in States which are not as explicit as the Illinois statute; so if you are asking me whether we in our bank in Illinois with our particular problems would have the answer made easier in that type of case, possibly the answer should be yes, but I do [fol. 1800] not believe that that could be universal. That is all I am trying to say.

It may not be responsive, but I mean it to be.

By Mr. Owens:

Q. I do not think your answer is responsive. Let me put the question to you again: With respect to a trust in which the trustee has the complete discretion to allocate current income as between a life beneficiary and a remainderman—do you understand that? Do you understand what type of a trust I am talking about now?

A. I don't know that I do. What income are you giving to a remainderman?

Q. I am talking about a trust where the trust instrument says that with respect to current income the trustee shall have the power and the right to determine how that income shall be allocated between the life tenant and the remainderman.

A. I am not familiar with accounts of that kind. I don't recall any.

Q. You are not acquainted with any accounts where the trustee has the right to determine whether receipts received by the trust are to be allocated either to the life tenant or accumulated to the corpus?

A. Yes.

Q. Now, with respect——

A. You are talking about the case where the trustee has discretion to accumulate or to distribute?

Q. That is correct.

A. I thought you were talking about a case where the trustee determines who gets the distribution.

Q. I understand. Well, I think we are clear now. With

respect to the latter case, which I am talking about now, where he has the discretion——

A. Yes.

[fol. 1801] Q. (Continuing) You do not envision there would be legal problems with respect to that, do you, in respect to any du Pont stock that was received as the dividend on- rather, any General Motors stock that was received as a dividend on the du Pont?

A. Well, to be on the safe side, the trustee would undoubtedly accumulate and hold it in the corpus and let the argument go on from there rather than distribute it to anybody and be in doubt when he could not get it back.

Q. If the trust instrument clearly gives him discretion he does not have to worry about being on the safe side, does he?

A. Yes, I think he does, because in this case it is an extraordinarily large dividend, and I think it might be alleged that it was an abuse of discretion.

Q. Well, now, you say in this case it is an extraordinarily large dividend; would you tell me whether or not you are assuming that the dollar value of the dividend received is greater or less than the current du Pont dividend?

A. No. I am saying it is large enough to raise a question as to whether it is a liquidating dividend or just an ordinary dividend or an extraordinary dividend.

Q. Well, assume if this plan were ordered into effect and du Pont distributed—made a dividend of General Motors stock of $6 in General Motors stock and no cash dividend—will you assume that case?

A. Yes.

Q. Now, do you assume that that would create a problem?

A. It would intensify a problem but it would not create it. The problem exists without this. It would intensify the problem where you raised your money for taxes. You have no cash from du Pont by hypothesis, you have only stock.

[fol. 1802] Q. I am talking with respect to an allocation now.

A. Yes.

Q. I leave the tax problem aside for a minute. With respect to the allocation of the receipt of the General Motors stock, does it make any difference to you whether it is paid

out within the normal dividend rate or on top of the normal dividend rate?

Do you understand my question, sir?

A. I wonder if I do. Will you repeat it?

Q. Does it make a difference in your answer, sir, as to whether the du Pont distribution of General Motors stock is paid out in a dollar value within their current dividend rate or in addition to and on top of their normal cash dividend?

A. On the single question of allocation? Is that the question?

Q. Yes.

A. Is that an extraordinary dividend or is it not?

Q. Well, with respect to a trust—we are talking about a trust, where the trustee has power to determine whether it goes to the corpus or whether it is paid out to the life beneficiary.

A. That must be in accordance with the limitations of the statute. The statute is clear——

The statute is not clear if it is an extraordinary dividend, as to whether it has to be apportioned between principal or income or it can all go either place; and if you are saying the trustee has the discretion to exercise it, I don't believe he would exercise it in favor of distributing.

Q. If he has the discretion to choose, either to accumulate it to corpus or to pay it out, can there be any legal problem as to his right to do either, if the instrument gives him that right?

A. No, not if the instrument gives him that right.

[fol. 1803] Q. Now there are certain trusts, are there not, that are taxable to the grantor of the trust or the settler of the trust?

A. Yes, sir. A revocable trust.

Q. Pardon?

A. A trust that can be revoked.

Q. Or the trust where the grantor retains certain power?

A. Yes.

Q. With respect to those trusts, do you anticipate that there would be any problems in connection with the allocation of the General Motors dividends with respect to the tax question?

Mr. Tierney: Will the reporter please read that question?

(Question read.)

Mr. Tierney: I object to the form of that question.
The Court: Sustained.

By Mr. Owens:

Q. In the grantor trusts, as I understand, the income of the trust is taxable to the grantor.

A. In what kind of trust? I didn't understand the first part of the sentence.

Q. Trusts where the settler of the trust retains certain powers, the income of the trust is taxable to the settler of the trust in certain cases.

A. Yes, in a revocable trust, it doesn't matter who gets the income, the donor has to pay the tax.

Q. So that there would be no problem of allocation in those cases, because the tax would be paid by the grantor, isn't that correct?

Mr. Tierney: Same objection.
You have two questions involved in there.
The Court: Sustained.
[fol. 1804] Mr. Owens: Read the question, please.
The Court: Rephrase the question.

By Mr. Owens:

Q. Have you, Mr. Beacom, classified the accounts in your bank according to the type of trust that they are—these trusts that hold the du Pont stock?

A. Again, now, by type of trust——

Q. Yes, with respect to whether or not legal problems would be encountered?

A. We haven't made any attempts yet to review these individual accounts to determine what the answer is in each individual case on the assumptions that this decree might be entered, if that is what you mean.

Q. Mr. Beacom, you have testified at some length with respect to what you believe to be market effects of the distribution proposed by the Government in this action.

I want to ask you, Mr. Beacom, if you are a market expert.

A. No, sir.

Q. Pardon?

A. I don't believe that I am.

Q. Are you qualified as a market analyst, sir?

A. After 35 years, I ought to have some understanding of the market. I can read statements and balance sheets, but I have not had the experience of being assigned as an investment analyst.

Q. Well, have you been in that end of the business where you were one who was making investment decisions; that is, among the responsibilities that you had?

A. Yes, sir.

Q. Have you had occasion at any time to undertake the disposal of large blocks of stock?

A. Yes, sir.

Q. Any quantities of stock approaching in size the size [fol. 1805] of the block of stock that would be required to be disposed of under the Government's judgment?

A. I think this is unprecedented.

I might, more specifically——

Q. Would you tell me the largest size block of stock that you have had occasion to be associated with in effecting its liquidation?

A. For ten years I was in charge of the closely-held corporation department, and many of those were sold under my direction and supervision by negotiations. I don't know whether that is what you mean. I think you are talking about handling the sales on the market of marketable stock. Is that correct?

Q. That is correct, sir.

A. I haven't been on the trading desk, but I have had to participate in the sales of rather large blocks of stock in order to raise money for the payment of taxes, but nothing in the magnitude of 20 million shares of General Motors stock.

Q. Could you tell me, in reaching the conclusions that you have testified to with respect to the percentage decline in market value of General Motors and du Pont stock, if you made any organized study?

A. Myself?

Q. Yes, sir.

A. No, sir. My staff men and analysts provided the material from which these conclusions were drawn.

Q. Are you testifying then with respect to conclusions that they stated to you?

A. No, sir, I have expressed my own opinion, based on the information that was provided.

Q. Let me ask you whether or not you have among your studies considered what the degree of correlation is that exists between the volume of transactions and the price at which stock is sold.

A. I am persuaded, to my own satisfaction, and it is my judgment that a correlation cannot be established satis- [fol. 1806] factorily with respect to those two factors.

Q. Have you made studies, sir, with respect to the correlation between price of the security and its yield?

A. I have not, myself, made such studies; but I have seen many of them.

Q. Did you make any such study in preparation for your testimony in connection with this case?

A. Yes, I am sure that was done.

Q. Did you, sir?

A. I did not.

Q. Did you examine certain materials in that connection?

A. Yes. I have read the record, too, of other testimony in this case, without being persuaded to the judgments that some have expressed.

Q. Are you stating now that your testimony is based in part on reliance on the testimony of other people who have appeared in this proceeding?

A. I don't know——

Q. Could you answer that question?

A. —That I properly understand your question, Mr. Owens?

Q. Are you stating now that your testimony with respect to the market consequences is based upon the testimony of other witnesses in this proceeding?

A. No. I am stating that it is my opinion, based on the best judgment I can exercise on a variety of reading that I have done in the general periodicals, in our own files, and in this case.

Q. But did you have occasion to make any special studies

of the correlation that exists between the price of a security and the yield?

A. I did not make such special study.

Q. Did you examine studies made for this purpose?

A. I have seen some, yes.

[fol. 1807] Q. Pardon?

A. Yes, I have seen some.

Q. And do those materials that constitute part of your work—are they materials in connection with the preparation of your testimony?

A. Yes.

Q. Do you have them with you?

A. No.

Q. Can you make them available to us?

Mr. Tierney: What is the question?

By Mr. Owens:

Q. Can you make the materials available to the Government with respect to the correlation between the market price of stock and the yield?

Mr. Tierney: I object to that question, and I will answer it for the witness.

This witness has been presented here, your Honor, as an expert in the operation of a Trust Department.

Mr. Owens: And I believe——

Mr. Tierney: Just a moment. You can interrupt witnesses, but don't interrupt me, young man.

The Court: One at a time, please.

Proceed.

Mr. Tierney: We presented this witness here as an expert in the operation of a large Trust Department. He has expressed opinions here upon which his Trust Department will act, and he has large accounts. He is not presented here as a market expert or as a market analyst, but is presented here as one who has to make judgments and decisions based upon the information he has, which affects millions of dollars of people's property.

That is what he is presented for. Any work papers that he has, we would object to your having them. They are,

[fol. 1808] work papers; they are confidential, and we have asked him to be a witness here, and we object to any such production.

Mr. Owens: I apologize to Mr. Tierney for having interrupted.

Mr. Tierney: I accept it.

Mr. Owens: I address myself to the question of the scope of the cross examination of this witness. He testified in a very definite way, your Honor, with respect to the extent of the market decline that he anticipates would result in both General Motors and du Pont stock. It is the purpose of any cross examination to determine the weight to be attached to his testimony, and in that connection I think it is essential that we learn the basis for his opinion and learn that basis in detail and not accept mere conclusions of the witness without exploring its foundation.

Mr. Tierney: If the Court please, this witness, again, is here expressing his own opinion and not expressing it as a market expert. He is in charge of operating a trust department. Whether his opinion is good, bad, or indifferent, it is the one that he is going to act upon. I think on that basis, his work papers—he is not expressing the opinion that appears in any work papers. Based upon his years of experience and the things he has read, and the things he has heard, he is expressing his own judgment.

The Court: If he is not here as a market expert, it seems to me that it would be unnecessary to call for those papers.

Mr. Owens: If that is the case, I move to strike all of [fol. 1809] the testimony that relates to the market consequences that he has testified to. If Mr. Tierney is withdrawing the testimony or is agreeable to having it stricken with reference to the market effect, I will be very happy to restrict the cross examination on that subject.

The Court: I think it may stand.

Mr. Owens: Do I understand then, your Honor, that the Court is ruling that I can't ask the witness to make these materials available to the Government?

The Court: Pertaining to the marketing of stocks, inasmuch as he has disqualified himself as an expert, I think it is immaterial.

Mr. Owens: I would like to have that clear for the record.

By Mr. Owens:

Q. Mr. Beacom, are you disqualifying yourself as an expert on market effects?

Mr. Tierney: I object to the form of that question.

The Court: I think he has already answered. I think he has already said that he doesn't think he is an expert on market effects.

Mr. Owens: Mr. Tierney stated that, but I don't hear it from the witness.

The Court: Mr. Tierney is not the witness; Mr. Beacom is the witness.

Mr. Tierney: He has already answered it, your Honor.

The Court: Yes.

Mr. Owens: I would like to have the record examined on [fol. 1810] that point, your Honor. I don't think that is the fact.

The Court: You may answer the question again, Mr. Beacom.

The Witness: Will you repeat the question?

By Mr. Owens:

Q. Are you qualified to express an expert opinion with respect to the market consequences of the Government's judgment, the Government's proposed judgment in this action?

A. In that phraseology, I believe that I am.

Mr. Owens: May we proceed with the cross examination, your Honor?

The Court: Proceed.

By Mr. Owens:

Q. Have you made any formal studies with respect to the correlation between the price of a security and its yield in connection with the preparation of your testimony?

A. Yes, that has been done.

Q. And have you examined what that correlation has been between the yield on securities where there has been large blocks of secondaries offered?

A. Yes, that has been done also.

Q. Would you tell us, if you can recollect, in which sec-

ondaries you have studied the correlation between the yield and the market price?

A. No, I can't.

Q. Is there any way that you could refresh your recollection?

A. Yes, I think there is.

Q. Is there any practical way that you can do it?

A. Not at the moment, no.

Q. Pardon?

A. Not at the moment. I haven't anything with me.

[fol. 1811] Q. Can you tell us the names of any of the securities that you have examined with respect to this subject of the correlation between price and yield on a security?

A. The Sloan Foundation offering was examined.

Q. What did you observe with respect to the correlation between yield and market price of General Motors stock as a consequence of that secondary distribution?

A. I don't think I understand what the purpose of that question is, Mr. Owens.

Q. You don't have to understand——

Do you understand the question?

A. I don't know that I do.

Q. I will repeat the question.

A. Please.

Q. What did your study reveal to you with respect to the correlation between the price of General Motors and the yield on General Motors during the period before and immediately after the Sloan secondary financing?

A. I think there was not a correlation that meant anything to me.

Q. There was no correlation that meant anything to you, is that correct, sir?

A. No.

Q. Did you examine any correlation between the yield and price of any other security that was offered by way of a secondary?

A. I accepted the judgment—or not the judgment, but the material that was submitted to me by our staff. I made a bench mark, as I call it, of what had happened in a great many of these cases; I made a conclusion as to what I

thought would be likely to happen in this. I registered that opinion, expressed it here this morning.

The Court: The Court stands recessed for ten minutes.

[fol. 1812] (A recess taken.)

The Court: Proceed.

By Mr. Owens:

Q. Mr. Beacom, what other marketing of large blocks of securities have you studied for the purposes of examining the relationship and subsequent relations between price and yield?

A. I have examined a great mass of figures and have tried to reach a judgment, an opinion. I have made no attempt to differentiate and distinguish. As a matter of practice, I don't try to remember anything I can look up. I am not accustomed to taking action in the trust department without verifying that the last thing I know happens still to be true.

So I am not gifted with a memory here that permits me to take all the component parts of the things that have entered into my general conclusion and assess them for you.

Q. There is no way that we can examine the basis for your conclusion?

Mr. Tierney: I object to the form of that question.

By the Witness:

A. Not unless you can retrace my 35 years in the business.

The Court: Overruled.

By Mr. Owens:

Q. That is probably going to be a little difficult.

A. Yes, sir.

Q. I take it, then, that you are also unable to testify in any detail with respect to the relationship between price and earnings, price earnings ratios, as a consequence of marketing large blocks of securities?

[fol. 1813] A. I believe I might as well say I don't be-

cause I don't know exactly what you mean by the relation of price and volume.

Q. Do you understand that among the principal determinant of stock prices are the question of yields and price earnings ratios?

A. Yes, I am aware that that is standard equipment with the analysts in determining what is going to be a price that an investor would be willing to pay for the security.

Q. And is that an important consideration in an investor's decision as to whether or not to buy a security?

A. It is a very important factor. The best illustration that I can think of for that is that our analysts concluded that if the Ford stock came out at 65, it would not be a bargain.

Q. Would you say that in your judgment the Ford issue was overpriced?

A. That was an opinion that was expressed by a great many analysts.

Q. Was that your opinion?

A. No. My opinion was that it would sell at that figure and that it might even go up. That happened to be right for a time. In the long run, the analysts were right.

Q. Well, in that case—you are talking about analysts that are employed in your bank?

A. Yes.

Q. In that case, their judgment was proved by events to be correct, and your judgment was proved to be incorrect, is that accurate?

A. No. My judgment was also for a time correct. My judgment was that it would sell; that it would go up. It did go up. After a few weeks, it went down.

Q. Was that contrary to your judgment?

A. No. I accepted their judgment that it was overpriced, [fol. 1814] based on the figures of prospects, yields, price earnings, and so forth.

Q. So that you accepted their judgment, which was based on price earnings ratios, and I take it that you recognize that they are an important factor in determining values in the stock market?

A. Let me tell you this, Mr. Owens. I participated in a group decision, which was that we would not buy the Ford stock at $65.00 a share, if it were offered at that figure.

Then we bought Ford stock in various accounts in the department, either at the direction of co-trustees or consultants.

So that if you would draw the inference that we didn't have any, didn't take any of the offerings, that would be an incorrect conclusion.

The fact is that we do different things in different accounts, depending upon our judgment as to the application of the requirements of the particular trust. That is sufficient for my purposes in over-all administration and in participation in these. I don't try to understand or remember these figures and these companies.

Q. Is it accurate to say that you did not make a formal organized study of past marketing of large blocks of securities in connection with your testimony?

A. I did not myself go back to source records. I studied compilations that were laid in front of me.

Q. How much time did you spend studying those compilations, sir?

A. Well, if it has any significance, I spent literally weeks, I would say, going over various data.

Q. In preparation for your testimony here?

A. Not in preparation for my testimony here so much as in trying to keep abreast of what was developing so that [fol. 1815] when the time comes for action, we will come up with the right answer.

Q. You recognize that this is a unique problem, do you not, created by this proposed Government judgment?

A. Yes, and it has the attention and concern of a great many other people beside myself.

Q. I am trying to find out how much time you devoted precisely to this problem, and not the general problem of securities in the market in connection with your regular activities.

A. I wish my time could be divided into compartments, but I can't give you anything other than an estimate that literally weeks of full days have gone into the consideration of what items appeared to be at least part of the problem that has been generated by this case.

Q. Well, can you recall any other large secondary issue that you considered in preparation of your testimony in connection with this case?

A. I didn't pay much attention to the secondary offerings, if the truth be known, because I don't think they are comparable.

Q. So, in general, you excluded from consideration large secondary offerings on the ground that you did not think they were comparable, is that accurate?

A. I didn't exclude them from consideration. I gave them as much weight as, in my judgment, they were entitled to, and that led me to think that in the overall picture, they weren't very important.

Q. I take it that because—did you reach that conclusion before and without studying the relationship between price earnings ratios and yields of secondary issues after they were marketed?

A. No, sir—before?

Q. Yes. You reached that conclusion without studying what the relationship was between price earnings ratios and yields of large blocks of stock that were marketed?

[fol. 1816] Mr. Tierney: What does that question mean? Price and yields and large blocks of stock. Will you explain that? I don't understand it.

By Mr. Owens:

Q. Do you understand the question?

A. I don't. I didn't hear it.

Q. I want to know whether you excluded from your consideration or decided they were entitled to very little weight, the large secondary offerings, without making an examination.

A. No, of course not.

Q. Of price earnings ratios and yields?

A. No.

Q. After the marketing of the securities?

A. Of course not. I made inquiry to find out what precedents there were, what large offerings.

Q. The only one you recall now, however, is the Sloan offering?

A. No, I don't know that that—I didn't say that was the only one. That is the only one that comes to my mind readily.

Q. Well, can you take a minute and reflect to see if you can recall to mind any other secondary that you considered,

and what the relationship was between its price earnings ratio and yields after the marketing of the security?

A. If I could name them, I couldn't add anything to the question of what those ratios were.

Q. Well, you couldn't determine whether or not, for instance, if it was a pharmaceutical company, whether its price earnings ratio was markedly different from other businesses in the same category?

A. No, I don't carry that in my head.

Q. I beg your pardon?

A. I don't carry that kind of information in my head nor attempt to.

[fol. 1817] Q. Well, you state that you did give it some consideration in connection with the preparation of your testimony?

A. Yes. I examined a lot of those things.

Q. Pardon?

A. I examined an awful lot of figures.

Q. In what fashion did you consider such figures? In what form did you consider such figures, sir?

A. You mean in what manner were the figures presented?

Q. Yes.

A. At every meeting of the investment committee, we have laid before us a wealth of statistical detail about these offerings as they come along, about the securities that we hold. I read those.

I arrive at a judgment about them. I act in accordance with that, and I then promptly forget them and wait for the next batch of figures to come along.

Q. Can you tell us what action you took or your committee took with reference to General Motors stock at the time of the Sloan secondary offering?

Mr. Tierney: Oh, if the Court please, I object to this. It is not cross examination. It is way far afield.

Mr. Owens: It is certainly not afield.

The Court: Overruled.

Mr. Owens: Read the question, please.

(Question read.)

By the Witness:

A. No, I don't have any recollection of the action that was taken.

Q. You have no recollection of the action that was taken?

A. No.

Q. Do you have any recollection of what the market price consequences were as a result of that offering?

[fol. 1818] A. My recollection is that the stock came out at about $75. It is around $49 now.

Q. Is that the extent of your recollection?

A. That is the extent of my recollection.

Q. Now, you stated in response to a question from Mr. Tierney that you understood generally what was contemplated by the Government's proposed judgment, is that correct?

A. I thought I did, yes, sir.

Q. And you understood that that contemplated the marketing of something close to two million shares of General Motors annually, is that correct?

A. For a period of ten years, yes, sir.

Q. In formulating your judgment as to a market decline of 15 per cent, in what manner did you consider the securities would be sold?

A. By a multiplicity of stockholders all over the country.

Q. No, with respect to the stock to be sold by the trustee, Mr. Beacom?

A. Oh, whether that would be sold piecemeal or by secondary offering?

Q. Did you contemplate that it would be sold by a series of secondary offerings underwritten by a syndicate?

A. I didn't give much thought as to how they would do it. I reached the conclusion that it was a job that I thought no trustee could adequately perform. Rightly or wrongly, that is my opinion about that.

Q. Without considering how it would be done, you concluded that it could not be done, is that right?

A. I assumed it would be done in the best way that the trustee could think of to do it, but since I don't think that he is going to find it easy to do, I didn't waste any time speculating about how he would try to do it.

Q. Well, you have certainly heard the expression that [fol. 1819] nothing fails until it has been thoroughly attempted, have you not?

A. Yes, but rather than use the expression before, I will use it now. I think that this is like amputating an arm to cure a hangnail. I think that the decree as proposed is one that brings about such dire consequences——

Q. Now, let me restrict your answer, if you will, to my question.

Mr. Tierney: Let him finish his answer.

Mr. Owens: I take it it is quite clear that the witness is volunteering, your Honor, and repeating a number of statements that he made on direct examination.

The Court: All right. Proceed.

By Mr. Owens:

Q. Now, if I understand your testimony correctly now, you made no assumptions in predicting a market decline of 15 per cent as to how the securities would be marketed, is that accurate, sir?

A. Yes, I think it is accurate. If I gave a thought to that, it was a fleeting thought only. I assumed that it would be done in the best manner possible.

Q. You didn't give any time to analyzing the relative prospects for success of the various methods by which it could be marketed?

A. No, because I couldn't influence nor control that one way or the other.

Q. Well, did you think it was fair to undertake to express an opinion of decline of 15 per cent based on that fleeting consideration, sir?

A. It might have been more.

Q. I didn't ask you whether it would be more or not. I asked you whether you felt that it was fair for you to express an opinion that there would be a decline in the [fol. 1820] amount of 15 per cent without having examined the manner or means by which the marketing would take place.

A. That is right. I do not think that that is a fairly well-founded opinion. I don't think there is any such thing as scientific accuracy in market forecasts.

Q. Doesn't the——

A. I don't offer that as an opinion that is infallible, but it happens to be my opinion. It is my opinion also that

out of the 4,300,000 approximately 1,700,000 shares annually will find its way into the market. But obviously, I can't prove that.

Q. Well, do you know of any existing requirements for General Motors stock by any large institution?

A. I beg your pardon, Mr. Owens?

Q. Do you know of any existing requirements for large quantities of General Motors by existing institutions or organizations?

A. Demand?

Q. That is right.

A. There is always a demand at a price. I have no way of gauging the extent of the present demand, and I have only a judgment based on experience as to what the introduction of a very large new supply will do to the price.

Q. Have you considered, for instance, what the prospective demand for blue chip industrial securities is by pension funds?

A. What the prospective demand is?

Q. Yes, sir.

A. I have an opinion.

Q. Is your opinion based on any concrete information with respect to their rate of growth?

A. Could I generalize to this extent? There is certainly a scarcity in some stocks by reason of the fact that in the last ten years pension funds have bought and put away for considerable period of time——

[fol. 1821] Mr. Owens: If your Honor please, I will have to ask the witness to confine his answer to the question addressed to him.

Mr. Tierney: Your Honor, he was responsive. I submit if he were not interrupted——

The Court: All right. Answer the question.

By the Witness:

A. Will you restate the question, Mr. Owens.

By Mr. Owens:

Q. In connection with your study of the demand for blue chip industrial stocks, have you made any study of the rate of growth of the institutional investment?

A. Yes, I have read a great deal on the growth of pension funds and profit-sharing funds. It is of interest to me.

Q. Have you made any attempt to measure what that growth is, sir, and relate it to this particular problem?

A. I have seen a great many figures on it. I don't know that I found a great many that I thought were reliable, and I have none in my head here, except to make the general statement that they have grown vastly in ten years and presumably, barring unforeseen contingencies, will continue to grow.

Q. Let me ask you, Mr. Beacom, would you make a decision with respect to the accounts of which your bank was fiduciary, based on the type of study that you have given to this problem, or would you require a more intensive study?

A. I would have to have that repeated. I don't believe—Could I have that question again?

Q. In making an investment decision with respect to securities that your bank manages in a fiduciary capacity, would you make such decision based upon a study as [fol. 1822] sketchy as the study you have indicated you made of underlying materials for this?

A. No. No, I tried to say a while ago that I wouldn't make a decision based on an opinion that I entertained six months ago, because maybe they repealed the things on which I had an opinion six months ago.

Q. So I take it that in reference to securities held by your bank in a fiduciary capacity, that is General Motors and du Pont, that you wouldn't make a decision until you had some idea of the manner in which the marketing was going to take place, is that correct, sir?

A. In the first place I wouldn't make the decision alone, you understand that. It would be a group decision.

How much I would be influenced by the manner of the sale, I think, is unimportant, but in any event, perhaps different than the same factor—it would carry different weight with me than the same factor with another member of our Investment Committee.

Q. Are you acquainted with the requirements of any particular large organization for sizable quantities of General Motors stock?

A. You mean do I know at present of an existing demand for General Motors stock?

Q. That is correct.

A. No, I do not.

Q. I show you Government Exhibit No. 172, Mr. Beacom, which is a table showing the number of shares of General Motors common stock purchased by or for the General Motors Corporation, the General Motors Bonus Plan during each of the years 1948 through 1957, and during the period from January 1, through October 27 of 1958.

Mr. Tierney: What is the question?

[fol. 1823] Mr. Owens: I said I am showing him the chart. I will come to the question presently if you can be patient.

Mr. Tierney: All right.

Mr. Owens: I think he should have an opportunity to exa[illegible]e the chart.

Mr. Tierney: Oh, by all means. Do you contend that the witness has ever seen this thing before?

Mr. Owens: Not that I know of, I have not contended that. That is why I am showing it to him now.

By Mr. Owens:

Q. Have you seen the chart before?

A. I do not recall that I have, no. I do not think I have but I have seen some figures about sales of General Motors, but not in this form. I do not remember this one.

Q. Do you understand the chart, sir?

A. I think I do. It has been——

Q. You note that it is adjusted?

A. It has been adjusted for splits.

Q. In terms of total stock splits?

A. Yes.

Q. That is a common practice in order to obtain a consistent picture, is it not, in your experience?

A. No, I do not think that it is quite applicable as a general rule. Yes, it is a common practice——

Q. Is it a common practice to adjust for splits?

A. It is common practice to adjust for splits. I do not know that you can draw a conclusion that if a million nine represents——

Q. Well, I have not drawn any conclusions yet. Let me ask the question.

A. Yes. Go ahead.

[fol. 1824] Q. Directing your attention to the year 1956 and 1957 on that chart, and further directing your attention to Column 1, I believe you will find that for the years 1956 and 1957 it states a particular number of shares of General Motors stock purchased by the General Motors Corporation?

A. Yes, sir.

Q. For a stock bonus plan.

A. About a million twenty-four in each year.

Q. Now, that would be in '56 and '57 one-half, approximately one-half or a little better than half of the amount that would be required to be marketed under the Government's proposed judgment, is that correct?

A. One-half of the required two million forced sales.

Q. That is correct.

A. Yes. I have the opinion that the other stock would come out of the other four million three.

Q. Well, now, just confine your answer to my question, if you will.

A. Yes. That is half.

Q. Now, if you will assume that those purchases continued at the rate shown on that chart or substantially in that fashion, how would that change your conclusion with respect to the decline of the General Motors stock?

A. Well, in the first place, I would not assume it would continue because——

Q. Wait a minute. Let me ask—I am putting to you an assumption, sir, and I am asking you to give your answer on the basis of the assumption that I put to you.

A. Oh. The assumption, yes, please?

Q. That the purchases of stock by General Motors Corporation, purchases of its own stock continue at the rate shown on that chart for the years 1956 and 1957. Assume that. Tell me how that would affect your judgment with [fol. 1825] respect to the market decline to be anticipated in the market price of General Motors stock.

A. Not very much because if it goes into the acquisition of this two million that is forced on the market, it is taken out to that extent of the general market.

Q. Well, don't you——

A. If there were nine million shares traded last year and

that included this million, there are eight million other shares, and this one goes over to take up that new supply but it does not increase the demand.

Q. Are you acquainted with why secondary offerings are sold off the market generally?

A. Why that is done?

Q. Yes.

A. I believe so.

Q. Would you tell me what that reason is?

A. Beg pardon?

Q. Would you tell me what that reason is, as far as you know?

A. To get rid of—this is in colloquial terms that maybe professional investment bankers would want to quarrel with me about, but it is to get rid of a large block in one fell swoop instead of piecing it up little by little.

Q. Well, it is in order to avoid an impact on the market, is it not?

A. Well, it has that effect, yes.

Q. Pardon? It has that effect?

A. It has that effect but that is not the purpose of doing it.

Q. Well, is it your testimony then, as I understand it, that you do not think this would affect your opinion with respect to the percentage decline in General Motors stock?

A. For two reasons, if I may say so, Mr. Owens. The first I have tried to give, that it simply takes the demand away from one side of the equation and puts it over in another spot without increasing the demand.

[fol. 1826] The other reason, that I would not give too much weight to, is that this first column you are talking about is the Bonus Plan, and I have no certainty there will ever be another bonus. I hope for the sake of the officers there may be, but there is nothing compulsory about that as there is about this liquidation, for instance, of the two million shares.

It is an iffy thing. The other is certainty if the decree is adopted.

Q. Now, do you know how long that bonus plan has been in effect, sir?

A. It has been in—no, I do not know exactly. I know there have been some occasions when they did not have one.

Q. So it is your testimony then that this would not affect

in any way your conclusion that General Motors stock is going to decline 15 per cent?

A. I think my precise conclusion was it would not materially affect my judgment.

Q. I take it as an officer of the trust investment committee of your bank you have occasion to participate in decisions with respect to the purchase of securities?

A. Yes, sir.

Q. And do you pay a large amount of attention to yield of securities in making a decision whether to invest or not?

A. Yes, that is a factor. It is much more important in some accounts than it is in others.

Q. That is one of the important factors, is it not?

A. A very important factor. You do not take a half of one per cent yield on IBM for a widow that wants to pay the rent with the income.

Q. I did not understand. Would you repeat your answer, sir?

[fol. 1827] Mr. Tierney: Read it back.

The Court: Read the answer.

(Answer read.)

By Mr. Owens:

Q. Could you explain that answer, sir? I am afraid I do not understand it.

A. Well, another way of stating the obvious is that a five per cent yield provides her more spendable income than a half of one per cent yield. It employs her money more profitably.

Q. So——

A. I suppose I withdraw from these statements you call volunteered, but I think it is important to recognize that while yield is a factor it is not the sole nor the controlling factor always.

Q. Well, you have stated——

A. Each account has to be tailored according to its own needs.

Q. But yield is one of the more important factors you take into account and changes in that in even a half per cent are oftentimes important?

A. That is right.

Q. Do you pay much attention to price earnings ratios?

A. Yes.

Q. And what importance do you attach to those, sir?

A. A great deal. Different members of the committee attach different importance to it. We also attach a great deal of importance to our judgment of management but we cannot put that in a scale and we cannot put it down on paper.

Q. Well, in making your investment decisions, you decide when shifts change in yields and price earnings ratios that you will dispose of certain securities and buy securities that have what is in your opinion better yield [fol. 1828] and better price earnings ratios.

A. Those proposals are routine. They are brought up as a matter of course, and in the recent past, with the shifting of an increase in bond yield, interest rates on bonds and the lower yields of stocks we were—I say, we, the committee, were deluged with recommendations and suggestions from many sources, not only from our own internal machinery, but from outside sources—"do this. Do that. Shift here. Shift there."

I cannot generalize about what we actually did, but those factors are considered.

Q. On the basis of your experience, would you say that there is a high degree of cross-elasticity of demand between stocks as their price earnings ratios and yields shift and fluctuate?

A. I am not certain whether I understand cross-elasticity. Is that the expression?

Q. Yes.

A. And you mean by that, please, Mr. Owens?

Q. By cross-elasticity I mean that when there is a relative decline in the yield of one security and a rise in the yield of another, that there will be a large amount of demand that will shift from the lower yield to the higher yield, and from the higher price earnings ratio to the lower price earnings ratio.

A. Yes.

Q. Does that explanation make it clear to you?

A. Yes, I think so. There is a shift in the demand, yes.

Q. Pardon?

A. There is a shift in the demand. I do not know that it is measurable, but it is observable as it happens.

Q. And do you know what percentage of securities are purchased in the market by institutional investors?

A. What percentage of the total that changes hands on [fol. 1829] the New York Stock Exchange goes to institutional investors? If I have heard that percentage I do not remember it.

Q. Do you know if institutional investors are more sophisticated and more sensitive to those changes than the individual investors? Is that correct?

A. Yes.

Q. So that the higher proportion of purchases and transactions that are accounted for by institutional investors, the more informed the judgments are going to be; is that a fair statement?

A. I would think so, yes.

Q. Pardon?

A. I would agree with that, yes, sir.

Q. Would it be fair to say then that the institutional investors' purchases and sales would show a higher degree of this cross-elasticity of demand depending upon the fluctuations in yields and price earnings ratio?

A. Do you mean by that are they more sensitive to these changes in yield and price?

Q. Yes.

A. Well, they are more informed, certainly, than the average small holder. Yes, I would think they move with greater alacrity and greater celerity, but I do not know what conclusion to draw from it. I do not know in which direction they are going to move.

Q. Well, if you take General Motors selling at a price of $40 a share, and assuming a $2 dividend, what yield will that be?

A. That is 5 per cent yield.

Q. 5 per cent yield?

A. Yes.

Q. And if it dropped, say, $4, do you know what the difference in the yield would be?

A. Well, I would look that up on the table. Yes, I could figure it.

Q. Well, it would make a measurable difference in change in per cent, would it not?

A. Yes, it would make a change.

[fol. 1830] Q. And if GM drops from 40 to 36 it would make a difference in its price earnings ratio, would it not?

A. (Witness nodding head.)

Q. And those matters would be reported by the established quotation services, would they not?

A. That is right. Bear in mind that the best a statistical analysis is, when it is provided to us, is a snapshot of a moving picture.

Q. I understand that.

A. You have to stop and arrest the picture at some point and take a look at it.

Q. Well, you have to make investment decisions at some point of time, do you not?

A. That is right.

Q. So you have to stop the picture at some moment in order to make a decision?

A. That is right, and that is all these calculations mean to me. They represent the picture at the moment they were taken.

Q. Well, does it indicate to you, sir, that as the declines that you have prognosticated here—if they were to take place, if they were to make significant changes in the yield, price earnings ratios, there would be a tendency, an important tendency for informed investors, at the very least, to create a demand for those securities?

A. Yes. I think I made the statement that there would be quite a re-shuffling of ownership that would be a consequence of some of the considerations you have mentioned. I never meant to say, and I do not think I did at any point, that there isn't some level at which you can bring up demand, some level of price, but——

Q. Well, taking this matter of the cross-elasticity of demand for a minute, you can certainly say that it exists between all outlets for the investor's dollar, does it not?

A. Yes.

[fol. 1831] Q. In real estate and securities?

A. Yes. Competition for the dollar.

Q. And I believe you referred to the competition for the investor's dollar between stocks and bonds?

A. Yes.

Q. Then there is a measure of cross-elasticity between all those outlets for the investor's dollar, and the tendency

is for the investment funds to go into the most attractive in terms of percentages, appreciation and percentage of earnings and return on investment?

A. Yes. Certainly I think it is correct to say that there is a tendency in that direction.

Q. And that tendency certainly exists, does it not, between industrial securities on the stock market?

A. You mean as between one stock and another?

Q. That is correct.

A. Sure, it works there, too.

Q. Pardon?

A. Surely. It works there, too.

Q. So that if we limit ourselves solely to the area of the stock market in common stock, most investors are interested in the return on their investment or the appreciation in the value, isn't that correct?

A. I don't want to appear to be quibbling or captious, but the only word I hesitate over there at all is "most." It is a quantitative expression. I certainly would agree that many——

Q. People interested in having a particular security, those people are generally a very small proportion of the people who are interested in having a security that is going to appreciate the most or give them the biggest return on their investment, isn't that fair to say that that is true?

A. I think if I understand that, my statement would be that the number of people wedded to a security, regardless, that won't sell, is small.

[fol. 1832] Q. It is small?

A. Is small.

Q. So that there is a high degree, a particularly high degree of cross-elasticity of demand among industrial securities, as some become more attractive by reason of their price earnings ratio or the yields, or the tendency of people who hold something else to liquidate that and buy what is more attractive.

A. There is a great mobility in money. Money is fugitive. It does jump back and forth. But I think there are some artificial factors that limit its mobility these days, such as the capital gains tax and income tax, and other factors that in prior times would have been regarded as irrelevant. But they undoubtedly would play their part in putting the brakes on what would be a normal mobility.

Q. But among securities, there is a high degree of acceptable interchangeability to the investor?

A. Yes, sure.

Q. And that the extent to which a stock is preferable to another stock principally will be determined by the yield, price earnings ratio and gross profit, is that correct?

A. Very largely, if not principally, yes. Those are important factors. I don't want to minimize the importance of the factors. I have difficulty with the quantitative expression.

Q. So that the demand for securities is one that can shift very rapidly, is that not true?

A. Indeed it will. If you drop the price on this stock, you'll get such a demand as you didn't dream existed. I have no question in my mind about that.

By the same token, if it goes up too much, through the roof, you will cut down the demand.

Q. Cut the demand. And they interact very——

[fol. 1833] A. There aren't very many people that buy Christiana or Superior Oil, because there aren't that many people that can lay that much money on the line, or are willing to, for one share of stock.

Q. The cross-elasticity of demand is much higher then, is that correct, among the lower price stock than among the higher price stock?

Mr. Tierney: If the Court please, I object to this. He has gone over this time and time and time again.

The Court: I think it has been covered.

Proceed.

By Mr. Owens:

Q. Mr. Beacom, in making your statement with respect to the amount of decline in the General Motors stock did you anticipate that the entry of the Government's proposed judgment in this case would change the management of the General Motors Corporation?

A. No, sir.

Q. Did you anticipate that it would change the opportunities and prospects for General Motors to appreciate in value, based on its increase in earnings, and so on, in the future?

A. I would hope that would be true over a long period of years.

Q. And there would be a continued growth?

A. Yes.

Q. So that in reaching your conclusion you did not assume, I take it, that this judgment would have an adverse effect in that respect?

A. Not on management, or no discernible relationship to the sales and profits.

Q. And sales and profits are important factors in determining earnings, are they not, sir?

A. In the long run, they will probably be much more important than this action.

Q. In your experience, sir, can you refer me to any [fol. 1834] instances where the price earnings ratios and yield ratios are as out of line with the growth prospects and the true earning capacities of the companies, such as you suggested might occur here?

Mr. Tierney: I object to the form of that question. It is complicated and compound, and unintelligible.

By Mr. Owens:

Q. Do you understand the question?

A. I thought I did. I am not quite certain——

Q. Since you are testifying, if you will answer——

A. Would you repeat it for me, please?

(Question read.)

By the Witness:

A. I still don't believe I understand the question.

By Mr. Owens:

Q. As I understand, sir, and in our discussion here we have developed the fact that the principal determinants of the price of stock are its yields and its earnings?

A. Important. I don't know that their——

Q. And its growth prospect, is that right?

A. Yes, they are among the important factors. I can agree with that.

Q. I want to know whether, in view of the high degree of cross-elasticity of demand between funds available for in-

vestment stock, why in the light of that you think that there would be anything different in the case of General Motors and du Pont than what is generally true?

Mr. Tierney: Same objection.

[fol. 1835] The Court: Does the witness understand the question?

The Witness: I don't know that I do, Judge.

I was just wondering if my opinion is worth anything on it, anyway, if I appreciated the significance of it.

By Mr. Owens:

Q. I wonder about that——

A. I concede that——

I am not trying to be entertaining.

I concede that price and yield have a great deal to do with the marketability or mobility of capital in markets; that prospects of sales and management are all intangible factors that enter into the judgment of people.

Q. Well, here we have no reason—you said you do not assume that they were changing, as a result of the entry of the Government's decree.

A. I said—yes, that I assume that the management would not change and the prospects, and so forth, due to this decree.

Q. You also testified that you agree that there was a high degree of cross-elasticity of demand among stocks, is that correct?

Mr. Tierney: If the Court please, I object.

By the Witness:

A. If by that, you mean people move from one stock to another for one reason or another, I agree.

Mr. Tierney: If the Court please, despite the kind nature of the witness, I object to this line of cross-examination and the repetition that has been gone over and over and over.

If you want time, you can ask the Court and then maybe [fol. 1836-1837] we can adjourn; but this witness is a busy witness, and I would suggest that the examination be confined to something related——

The Court: I think there has been considerable repetition, Counsel.

The Court will adjourn at this point.

(Thereupon an adjournment was taken in the above-entitled cause until Friday, March 20, 1959, at the hour of 10:00 o'clock a.m.)

[fol. 1838]

Transcript of Proceedings of March 20, 1959

The Clerk: Case on trial.

The Court: I would like to discuss with counsel the question of whether or not you wish to have a hearing on Good Friday. I understand there has been some inquiry. I will abide by the wishes of counsel.

Mr. Tierney: If the Court please, if I may suggest, it might be helpful if Government counsel and other counsel would meet with you in Chambers and see what our schedule is for the completion of this trial.

The Court: All right. You may step into Chambers.

(Whereupon the Court and Counsel conferred in Chambers, after which the following further proceedings were had in open court:)

The Court: Proceed.

Mr. Cox: May it please the Court, before we begin, there is one matter that perhaps I should state for the record. We had planned to call as our witness today Dean Jacoby. Dean Jacoby is very busy. He cannot be here on Monday. At 9:00 o'clock in the morning Monday, he has to appear and testify before the Joint Economic Committee of the Congress.

I understand that the cross-examination of Mr. Beacom will probably not be very long. If that is incorrect, I was going to suggest, since Mr. Beacom lives in Chicago, that we just suspend the cross-examination and start with Dean Jacoby.

In any event, while I always hesitate to make a request of this kind, I should like to suggest to the Court if it is possible and we have to sit a little later today to finish Dean [fol. 1839] Jacoby, I would ask the Court to give that suggestion some consideration.

The Court: That is agreeable to the Court.